



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

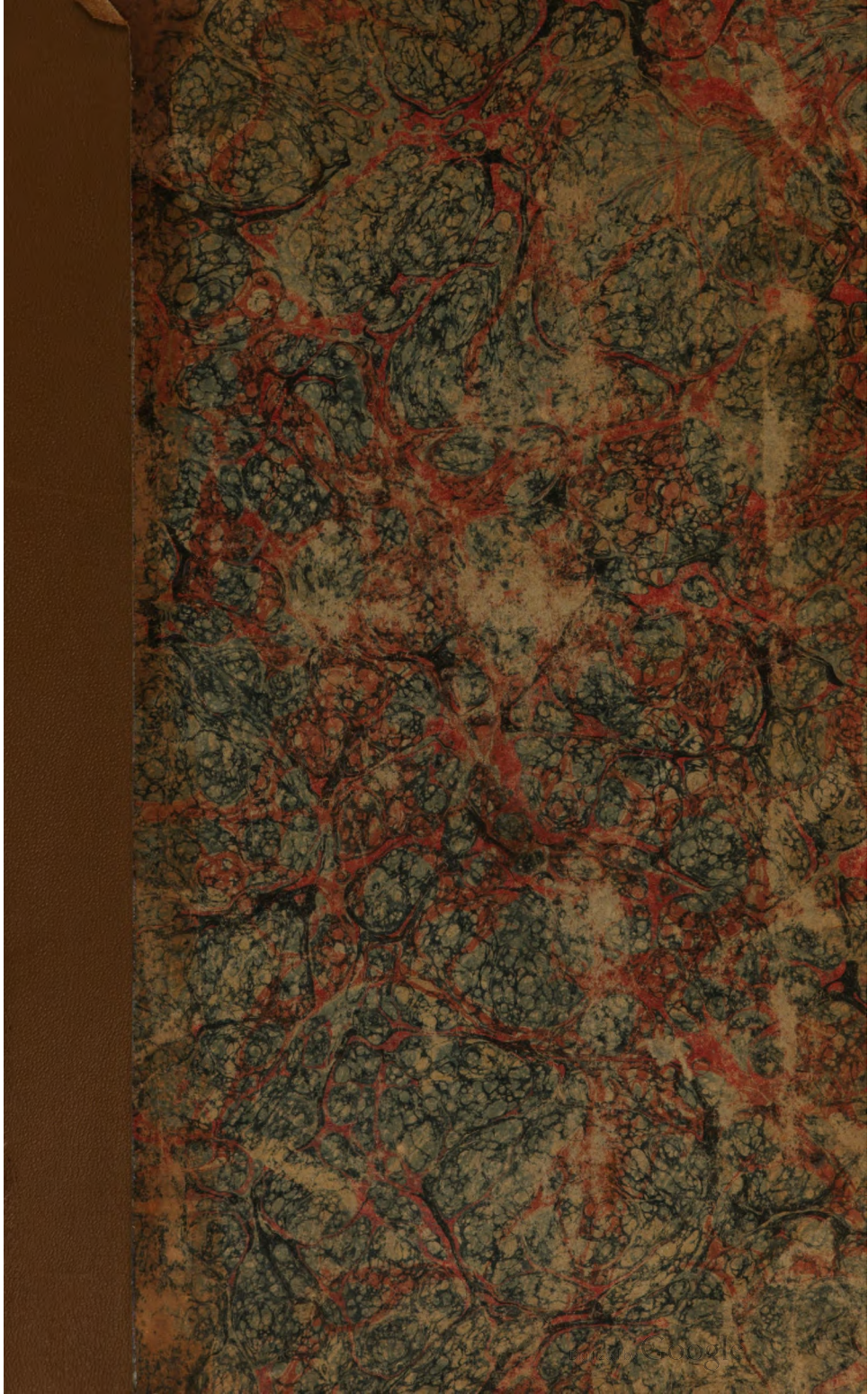
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

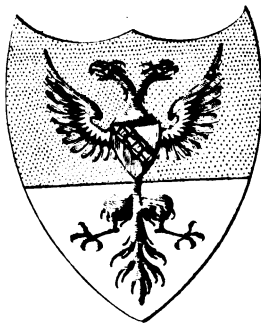
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





Delapre Abbey



*Stanford
Law Library*



Given by
Title Insurance
and
Trust Company
Foundation

EP
APF
QJX-2

STANFORD LAW LIBRARY

THE
LAW OF TYTHES,

UPON AN ORIGINAL AND PRACTICAL PLAN :

COMPRISING

*The Statutes, Adjudged Cases, Resolutions, and Judgments,
in Equity and the Ecclesiastical Courts.*

Originally compiled

By **JOHN PAUL, Esquire.**

THE SECOND EDITION,

WITH AN

APPENDIX;

CONTAINING

A copious Abstract of the 43d Geo. 3. c. 84. relative to SPIRITUAL
PERSONS HOLDING FARMS, and ENFORCING RESIDENCE
on their Benefices :

TYTHE TABLES,

Calculated upon the most equitable Terms of Composition :

AND

A COMPREHENSIVE INDEX :

Constituting a PRACTICAL GUIDE to the

COUNTRY GENTLEMAN,
FARMER,

PARSON,
SOLICITOR, &c. &c.

By **JOHN IRVING MAXWELL,**

Of the Hon. Society of the Inner Temple.

LONDON :

Printed by Rider & Weed, Little Britain,

FOR W. J. AND J. RICHARDSON; LACKINGTON, ALLEN AND CO.

H. D. SYMONDS; LONGMAN, HURST, REES,

AND ORME; AND T. OSTELL.

1807.

ADVERTISEMENT

TO THE FIRST EDITION.

THE following sheets are compiled for the particular use and service of the country gentleman, parson, farmer, and all others who are or may become interested in paying or collecting the different species of tythes as by law they are now settled and ascertained.

The Editor has entirely divested the present Treatise of those long, tedious, and declamatory arguments of the *counsel* and *civilians*, on the nature, class, and distinction of tythes, with which almost all other works on this subject are so uselessly enveloped. Here will be found the essence of *every thing* that has been *judicially* determined on this head, great part of which has hitherto lain dispersed and unnoticed in a variety of statutes, *equity* and *ecclesiastical* decrees and ordinations.

The tythe law has for ages past been a ground of constant litigation between individuals, sometimes to the total ruin of themselves, their families, and fortunes; and where this has not been the case, it has raised a spirit of dissension that never after could be entirely eradicated.

This

ADVERTISEMENT.

This work is offered as an humble attempt to remove that evil. It will be found to contain a more comprehensive, yet simple, and explicit definition of the law of tythes than in any book now extant, and in a style and manner suited to those who are not read in the law as well as those who are.

The article of *Agistment of Cattle* is here fully investigated, and finally determined, from a case in point lately decreed in the Court of *Exchequer*. No person can now possibly err in this branch of the tythe law, who will give themselves the trouble to peruse this pamphlet.

If the intelligence here given is found useful and satisfactory to those who have occasion to consult the subject for practical use, the Editor's wish and design is fully accomplished.

June 1, 1781.

PREFACE

TO THE SECOND EDITION.

THE compiler of this treatise has so judiciously, and perspicuously, pointed out his objects in the original publication, that nothing more remains for the person, to whose charge the present edition has been confided, than simply to state those additions, which it has been thought necessary to introduce.

Adhering, strictly, to the original plan of Mr. PAUL, who intended his publication more as a practical guide, to convey the most ready and accurate information upon subjects of more immediate interest, and daily occasion, than to investigate, whether the payment of tythes be a divine or a municipal obligation, or the more remote and abstruse doctrines of theology; no other additions have been here introduced, than those, which have been conceived of practical importance to all parties interested on the subject.

In preparing, therefore, the present edition, the most recent publications have been consulted, and the latest judicial decisions incorporated. An Appendix has also been added, containing a copious Abstract of the 43d Geo. 3. for amending the laws relative to spiritual persons holding farms, and enforcing residence upon their benefices, which, it is presumed, must be particularly interesting to clergymen in general: to which has
been

PREFACE.

been added, a collection of Tythe Tables, alphabetically arranged, estimating the value of the different species of crops, and proposing a general payment of a certain settled sum for every acre, cropped or uncropped, throughout the several farms : a mode of composition of all others the most equitable, for adjusting fairly the respective interests of the tytheholder and landholder.

This suggestion has been taken from Mr. Bearblock's excellent treatise on the Tythe Laws. How far the Legislature, in its wisdom, may deem it prudent to simplify this branch of jurisprudence, as has been already done with respect to the Stamp Duties, the Parochial System, &c. and by establishing general rules for payment of *certain* sums, capable of universal application, is not for the writer of this to enquire ; he feels himself, however, perfectly warranted in asserting, that such regulations, when the *less* awful state of the empire shall afford a proper opportunity for the experiment, would probably diminish those ruinous litigations, which in but too many instances have produced ruin and inveterate animosities, where prosperity, and the mutual amities of social intercourse, would otherwise have probably flourished.

A copious Index has also been substituted for an imperfect table of contents, contained under that title, in the first edition ; which, by presenting a minute enumeration of the particular articles, will, at the same time, communicate readily and accurately the precise points of information required.

J. I. MAXWELL.

23, *Castle-street, Holborn,*
Jan. 1, 1807.

CONTENTS.

CHAP. I.

<i>Of Parsons and Vicars—What they are—Qualifications necessary for those Functions—How and by whom created—What is a temporary, and what a total Incapacity—Appropriations, what they are—Advowsons, what—Their different kinds, and how they operate—A Rectory or Parsonage explained—Of Vicarages and their Endowments</i>	Page 1
---	--------

CHAP. II.

<i>Tythes, what they are.—Their general Operation and Names—How divided—What will alter the customary and usual Division of Tythes—To whom extraparochial Tythes belong—To whom Tythes are due in particular cases</i>	7
--	---

CHAP. III.

<i>Of Exemption from Payment of Tythes by Modus, Custom, and Prescription, &c.</i>	14
--	----

CHAP. IV.

<i>Of Things tytheable and Things not tytheable</i>	25
---	----

CHAP. V.

<i>The Manner of setting out, taking, and carrying away Tythes, as settled by the Common Statute and Ecclesiastical Law.</i>	52
--	----

CHAP. VI.

<i>The several Remedies to be taken for the recovering of Tythes by the Common Statute and Ecclesiastical Law</i>	56
---	----

CHAP. VII.

<i>What Leases Parsons, Vicars, and other Ecclesiastical Persons may make of their Glebe, Tythes, Farms, &c.</i>	79
--	----

CHAP. VIII.

<i>The Manner of paying Tythes, together with the Sums payable by the respective Parishes in London.</i>	96
--	----

CHAP.

CONTENTS.

CHAP. IX.

A Table of the several Monasteries, Abbeys, &c. exempt from Tythes, being dissolved by stat. 31 Hen. 8. 157

APPENDIX.

Abstract of the 43d Geo. 3. relative to Spiritual Persons holding Farms, and for enforcing their Residence 145

Tythe Tables, estimated according to the most equitable Terms of Composition 170

NEW EDITIONS

(*Brought down to the present Time*) of the following Works,
By the late JOHN PAUL, Esq. Barrister at Law.

Lately Published, Price 5s. sewed,

A DIGEST of the BANKRUPT LAWS; or, Debtor and Creditor's Compendium; being a perspicuous Arrangement and familiar Explanation of all the *Laws, Decisions, and Proceedings*, under a *Commission of Bankruptcy*, from the *Act of Bankruptcy* to the *final Allowance of the Certificate*. With an Appendix of *Precedents, Bills of Costs*, a copious *Index, &c. &c.* The Second Edition, with considerable *Additions and Corrections*. By JOHN IRVING MAXWELL, of the Hon. Society of the Inner Temple, &c.

Printed for W. J. and J. Richardson; Lackington, Allen, and Co.; H. D. Symonds; Longman, Hurst, Rees, and Orme; and T. Ostell.

Of whom may be had, the Ninth Edition, Price 3s. sewed.

THE LAWS relative to LANDLORDS, TENANTS, and LODGERS; or Every LANDLORD and TENANT HIS OWN LAWYER. Comprising, Agreements—Assignments—Double Rent—Distress—Ejectment—Lodgings—Mortgages—Notices—Fixtures—Rent—Repairs—Waste, &c. With select *Precedents* for letting Houses, Lands, Apartments, and other useful *Deeds*; *Tables of Coils, Stamps, &c.*

Sixth Edition. Price 3s. 6d. sewed.

THE PARISH OFFICER'S COMPLETE GUIDE: comprising the *Laws* relative to the respective Duties of Churchwardens, Overseers, Constables, Surveyors of Highways, &c. &c. including all the *Acts of Parliament* and *Adjudged Cases* regulating the *Poor Rates, Parish Settlements, Certificates, Apprentices, Repairs of Highways, &c. &c.*

Fourth Edition. Price 3s. sewed,

A DIGEST of the GAME LAWS: comprising all the *Statutes* now in Force, relative to *Forests—Deer—Hares—Rabbits—Partridges—Pheasants—Red Game—Black Game—Pigeons—Dogs—Sea Fish—River Fish, &c.* Regulations for *Game-keepers, Certificates, &c. &c.*

N. B. In giving Orders for the above Works, be particular in saying those by JOHN PAUL, Esq.

THE LAW OF TYTHES.

CHAP. I.

Of Parsons and Vicars.—Qualifications necessary for those Functions.—How and by whom created.—What is a temporary, and what a total Incapacity.—Of Appropriations.—Of Advowsons.—Their different Kinds, and Mode of Operation.—A Rectory or Parsonage explained.—Of Vicarages, and their Endowments.

A PARSON, i.e. *persona ecclesiæ*, is one that hath full possession of all the rights of a *parochial* church. He is so called, because in his person the church, which is an invisible body, is represented. He has, during his life, the freehold in himself of the *parsonage-house*, the *glebe*, the *tythes*, and *other dues*. At the first establishment of *parochial* clergy, tythes were divided into four parts, as follow :

1. For the use of the bishop.
2. For the maintaining the fabric of the church.
3. For the poor.
4. For the incumbent.

Bishops having since been otherwise amply provided for, they are now prohibited from demanding their usual share of tythes.

Glebe tythes, &c. are sometimes *appropriated*, that is, the benefice is perpetually annexed to some spiritual corporation, either *sole* or *aggregate*, being the patron of the living,

A parson, what he is, Co. Litt. 300.

An appropriation, what constitutes the same. Plowd. 496, 500. Hob. 307.

living, whom the law esteems equally capable of providing for the service of the church as any single private clergyman. In order to complete an *appropriation*, the King's license, and consent of the Bishop, must be first obtained, because they, at some time or other, may have an interest by *lapse* in the presentation to the benefice, which cannot happen if it be appropriated to the use of a corporation, which never dies. The consent of the patron is, in this case, necessarily implied, because the appropriation can be originally made to none but to such spiritual corporation as is patron of the church, the whole being a license for the patrons to retain the *tythes* and *glebe* in their own hands, without presenting any clerk, they undertaking to provide for the service of the church. An appropriation so created, the appropriators and their successors are perpetual parsons of the church, and must sue, and be sued, in all matters concerning the rights of the church, by the name of *parsons*.

Appropriations
how severed.
Co. Litt. 46.

Appropriations may be severed *two ways*, and the church become *disappropriate*. The first is, if the patron or appropriator presents a clerk who is instituted and inducted to the parsonage; for the person so inducted is to all intents and purposes *complete parson*. Appropriations severed can never be re-united again, unless by a repetition of the same solemnities. The *clerk* so presented is distinct from the *vicar*; the *rectory* thus vested in him becomes what is called a *sine cure*, because he hath no cure of souls, having a vicar under him, to whom that cure is committed. If the corporation, which has the appropriation, is dissolved, the parsonage becomes disappropriate at *common law*, because the perpetuity of person is gone, which is necessary to support the appropriation.

Seld. Rev. of
Tythe, c. 9.
Spel. Apol. 35.

In this manner, and subject to these conditions, may appropriations be made at this day: and thus were most, if not all, of the appropriations at present existing, originally made; being annexed to bishopricks, prebends, religious houses, nay, even to nunneries, and certain military orders, all of which were spiritual corporations. At the dissolution of monasteries, by statutes 27 Hen. 8. c. 28. and 31 Hen. 8. c. 13. the appropriations of the several parsonages, which belonged to those respective religious houses (amounting to more than *one-third* of all the parishes in England), would have been, by the rules
of

of the *common law*, disappropriated, had not a clause in those statutes intervened, to give them to the king in as ample a manner as the *abbots*, &c. formerly held the same at the time of their dissolution.

Appropriating corporations, or religious houses, used Seld. Tythes, formerly to depute one of their own body to perform divine service, and administer the sacraments in those parishes of which the society was *parson*. This officiating minister was in reality no more than a *curate deputy*, or vicegerent of the appropriator, and called *vicarius*, or *vicar*. His stipend was at the discretion of the appropriator, who was, however, bound of *common right* to find somebody for that service. This, however, was executed in so scandalous a manner, and the parishes suffered so much by the neglect of the appropriators, that the legislature was forced to interpose. It was accordingly enacted, by statute 15 Rich. 2 c. 6. that in all appropriations of churches, "the diocesan bishop shall ordain" (in proportion to the value of the church), a *competent sum to be distributed among the poor parishioners annually*; "and that the vicarage shall be sufficiently endowed." It seems, the parish were frequently sufferers, not only by the want of divine service, but also by withholding those alms for which, among other purposes, the payment of *tythes* was originally imposed; and, therefore, in this act a pension is directed to be distributed among the poor *parochians*, as well as a sufficient stipend to the *vicar*. He being liable to be removed at the pleasure of the appropriator, was not likely to insist too rigidly on the legal sufficiency of the stipend. To remedy which, by statute 4 Hen. 4. c. 12. "It was ordained, that the vicar shall be a *secular* parson, not a member of any religious house; that he shall be vicar *perpetual*, not removeable at the caprice of the monastery; and that he shall be canonically instituted and inducted, and be sufficiently endowed, at the discretion of the ordinary, for these three express purposes, to do divine service, to inform the people, and to keep hospitality." The endowments made in consequence of these statutes, have usually been by a portion of the *glebe*, or land, belonging to the parsonage, and a particular share of the *tythes*, which the appropriators found it most troublesome to collect, and which are therefore generally called *privy* or *small tythes*;

the greater, or *predial tythes*, being still reserved to their own use. This rule was not observed in the endowment of all vicarages. Some are more liberally, and some more scantily endowed; the *tythes* of many things, as *wood in particular*, are in some parishes *rectorial*, and in others, *vicarial tythes*.

Distinction between a parson and vicar.

The distinction between a *parson* and *vicar* is this, viz. The parson has, for the most part, *the whole right* to all the *ecclesiastical dues* in his parish: a vicar has generally an appropriator over him, who is entitled to the best part of the profits, to whom he is, in effect, no more than *perpetual curate*, with a standing salary. In some places, the vicarages have been considerably augmented by a large share of the *great tythes*; which augmentations were greatly aided by statute 29 *Car.* 2. c. 8. enacted in favour of *poor vicars and curates*, which rendered such temporary augmentations (when made by the appropriators) perpetual.

To constitute a *parson* or *vicar*, there are *four* requisites necessary, viz. *holy orders, presentation, institution, and induction*. By the *common law*, a deacon, of any age, might be instituted and inducted to a *parsonage* or *vicarage*. But by 13 *Eliz.* c. 12. it was enacted, "that no person under *twenty-three* years of age, and in deacon's orders, should be presented to any benefice with cure; and if he were not ordained priest *within one year* after his induction, he should be *ipso facto* deprived." By statute 13 and 14 *Car.* 2. c. 4. "No person is capable to be admitted to any benefice, unless he hath been first ordained a priest;" and then he is, in the language of the law, *a clerk in orders*. If he obtain orders, or a license to preach, by money or corrupt practices, the person giving such orders forfeits *forty pounds*; and the person receiving, *ten pounds*, and is incapable of any *ecclesiastical preferment* for *seven years* afterwards.

A clerk, how presented.

Burn, v. 1. p. 103

2 Roll. Abr.

p. 355, 356

St. 3 Rich. 2. c. 3.

7 Rich. 2. c. 12.

5 Rep. 58.

2 Inst. 632.

A clerk may be presented to a *parsonage* or *vicarage*; that is, the patron, to whom the advowson of the church belongs, may offer his clerk to the bishop of the diocese to be instituted. When a clerk is presented, the bishop may refuse him on many accounts. First, if the patron be *excommunicated*, and remain in contempt *forty days*. Secondly, if the clerk be unfit; which unfitness is of several kinds. First, with regard to his person; as if he be

be a *bastard*, an *outlaw*, an *excommunicate*, an *alien*, under *age*, or the like. Next, with regard to his *faith* or *morals*; as for any particular heresy, or vice that is *malum in se*: but if the bishop alledge only in *generals*, as that he is *schismaticus inveteratus*, or object a fault that is *malum prohibitum* merely, as haunting taverns, playing at unlawful games, or the like, it is not good cause of refusal. Lastly, the clerk may be unfit to discharge the *pastoral* office for want of learning. In any of which cases the bishop may refuse the clerk. In case the refusal is for heresy, schism, inability of learning, or other matter of *ecclesiastical* cognizance, *there* the bishop must give notice to the patron of such his cause of refusal, who, being usually a *layman*, is not supposed to have knowledge of it, else he cannot present by *lapsé*: but if the cause be *temporal*, he is not bound to give notice.

If an action at law be brought by the patron against the bishop, for refusing his clerk, the bishop must assign the cause. If the cause be of a *temporal* nature, and the *fact* admitted (as, for instance, *outlawry*), the judges of the King's courts must determine its validity, or whether it be sufficient cause of refusal: but if the *fact* be denied, it must be determined by a jury. If the cause be of a *spiritual* nature (as heresy particularly alledged), the *fact*, if denied, shall also be determined by a jury; and if the *fact* be admitted or found, the court, upon consultation, and advice of learned divines, shall decide its sufficiency. If the cause be want of learning, the bishop need not specify in what points the clerk is deficient, but only alledge that he is deficient; for stat. 9 *Edw. 2. st. 1. c. 13.* is express, that the examination of the fitness of a person presented to a benefice, belongs to the *ecclesiastical* judge; but because it would be nugatory in this case to demand the reason of refusal from the ordinary, if the patron were bound to abide by his determination, who has already pronounced his clerk unfit; therefore, if the bishop returns his clerk to be *minus sufficiens in literatura*, the court shall write to the *metropolitan* to re-examine him, and certify his qualifications; which certificate of the *archbishop* is final.

On institution, the clerk may enter on the *parsonage-house* and *glebe*, and take the *tythes*; but he cannot

B 3

grant

grant, or let them, or bring an action for them till induction.

The different kinds of advowson.

C. Litt. 119, 121, 307.

AN ADVOWSON is the right of presentation to a church or *ecclesiastical* benefice. There are three kinds of advowsons, viz. *presentative*, *collative*, or *donative*; when *presentative*, the patron hath a right of presentation of a clerk, to the bishop or ordinary, if *canonically* qualified; *collative* is where the bishop and patron are one and the same person; *donative* is when the King, or any subject by his license, doth found a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron, subject to his visitation only, and not to that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction. These advowsons have all tythes annexed to them, and are usually paid to the officiating ministers; which before were given to the clergy in common.

A rectory or parsonage, what. Spel. r. Degge's Parson's Counsellor, c. 13. p. 190.

A RECTORY or parsonage is a *spiritual living*, composed of *land*, *tythes*, and *other oblations* of the people, separate, or dedicate to God, in any congregation, for the service of his church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed.

Ibid.

A rectory or parsonage usually consists of *glebe land* and *tythes*, with the *offerings*, yet it may be a rectory, though it have *no glebe* but the church and church-yard: and in London, and other great towns and cities, there may neither be *glebe nor tythes*, but *annual payments and offerings in lieu thereof*.

Ibid.

By grant of rectory, all the glebe tythes and offerings pass.

A vicarage, what. Degge, 191.

A VICARAGE is a cantel or portion of the rectory, set out by the patron, parson, and ordinary, for the maintenance of a perpetual vicar; who, as vicegerent of the parson, hath the cure of the souls within the parish where he is vicar. A vicarage may consist of *land or tythes alone*, or of *glebe tythes, offerings*, or in an *annual pension*, without glebe or tythes; and such pensions have been limited by several canons.

Ibid.

Vicarages are in general endowed with glebe and tythes.

Ibid. 194.

Indowments of vicarages are always construed in law favourably to the vicar, especially where the cure of souls is annexed.

CHAP.

CHAP. II.

Tythes, what they are.—Their general Operation and Names.—How divided.—What will alter the customary and usual Division of Tythes.—To whom extraparochial Tythes belong.—To whom Tythes are due in particular Cases.

TYTHES, by the best law, and ecclesiastical authorities, are defined to be the *tenth* part of the *increase* yearly arising, and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, payable towards the maintenance of a parish priest, by every person who hath any thing tytheable in the parish, unless he can shew some *special* exemption therefrom, as will be shewn hereafter. They are properly due to such clergy as have the cure of souls in the parish where they arise.

Tythes, what they are.
Blac. Com. v. 2. p. 24.
Wood's Inst. p. 161.
2 Rep. 411.

Tythes are usually classed under three heads, viz. **PERSONAL**, **PREDIAL**, and **MIXED**. How classed,

PERSONAL tythes are those profits arising from the honest labour and industry of an individual, employing himself in some personal work, artifice, or occupation, being the *tenth* part of the nett profits after deducting all charges and expences, according to a person's estate, condition, or degree*.

PREDIAL tythes are such as arise merely and immediately from the ground; as for example, *grain of all sorts, hay, pulse, wood, fruits, and herbs*†.

MIXED tythes participate in their nature both of predial and personal, arising not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof, as *all sheep, beasts*,

* This claim is nearly obsolete; millers only being, at this day, subject to the common payment of this tythe.—E.

† The tythe of the articles above enumerated, becomes due as the crop is severed from the ground, and as many times as a renovation or fresh crop is severed from the

same land in the course of the year. And the tythe-holder or his deputy has a right to see that the same is fairly set forth from the other nine parts, before any part of those nine parts is removed from the field.—*Thomas v. Rees*, Gwill. Cas. v. 2. p. 796.—E.

and horses, heifers, steers, colts, fillies, chickens, milk, cheese, eggs. The depasturing cattle of all sorts, is called the *tythe of agistment*, that is, the *tenth* part of the value of the keeping or depasturing such cattle.

Tythes, with regard to value, are also divided into GREAT and SMALL; which are distinguished by their nature and quality, and not by quantity, locality, or mode of cultivation *

Extraparochial
tythes.
Seld. Hif. Decim
P. 365.
10 Hen. c. 18.
Co. 5. part 128.

Tythes extraparochial, or within the compass of no certain parish, belong to the King, and may be granted to whom he will; he being deemed a mixed person, and capable of tythes at *common law* in *permanency*, and in consequence they have been adjudged to him, not only by several resolutions of law, but also in parliament.

By stat. 2 *Edw. 6. cap. 13. sect. 3*, "Every person which shall have any beasts or cattle tytheable, depasturing on any waste or common ground, whereof the parish is *not certainly known*, shall pay tythes for the increase of the said cattle to the parson, owner, or their farmers, of the parish or place where the owner of the said cattle inhabiteth."

Sect. 4. "No person shall be sued or compelled to pay tythes for any lands, which by the laws of this realm, or by any privilege or presumption, are not chargeable with such tythes, or that be discharged by any composition real."

To whom tythes
are due in parti-
cular cases.
Degge, p. 226.
Hely, p. 31.

If a parson lease his *glebe lands*, and in such lease doth not also grant the tythes thereof, the *tenant* shall pay the parson tythes.

The same law holds if an *appropriator*, *vicar*, &c. make leases:

Co. 1. III. d.
Cro. Eliz. 261.

The parson shall have tythe of his own tenant, so he shall have of his *feoffee*. If he hath lands in the same parish whereof he is parson, and demise his tythes, he shall pay tythes to his lessee.

Dyer 43, p. 21.

If a parson sow his ground, and then sell the *emblements*

* The only criterion for determining what are *small* or *vicarial* tythes, in a given parish, is by the *endowment* or *prescription*: the former, when pleaded, must be produced; the latter is founded upon a supposed endowment, which is

lost: *Grass*, *hay*, and *wood*, in some parishes, are *great*, in others, *small* tythes, according to prescription, founded on endowments, which may vary in almost every parish in England.—E.

(the

(the corn growing on the ground), the buyer of the corn shall pay the tythe of it to the parson that sowed and sold the corn.

By stat. 28 Hen. 8. cap. 11. all tythes and other profits belonging to a rectory, are given to the successor from the death of the late incumbent. Rolls, 655. K. 1.

[Note, Notwithstanding the foregoing statute, the law seems clear, that the executor of the parson shall have the corn sown by his testator in his life-time, as the executors of other tenants for life have by the law.]

It is settled, on stat. 28 Hen. 8. That if the parson, vicar, &c. sow the land, and be deprived, resign, or accept another living, the successor shall have the tythe.

It hath been held, that the vicar, upon a general indowment, shall not pay tythe for his glebe to the parson on the fruits arising therefrom, *without special words* in such indowment. More, 910, 457.

If a vicar be endowed of all the *small tythes* arising within the parish, yet he shall not have the small tythes arising upon the glebe lands of the parson. Winch. p. 70.

Tythes by *prescription* may be *appendant* on an ancient chapel. More, 457, 910.

By the *canon law*, *personal* tythes are to be paid where the party communicates, but *predial* to the parson within whose parish the land lies. Decret. Greg. de decim. cum sunt Gloss.

[Note, In general, tythes are to be paid for every thing that yields an *annual increase*, as *corn, hay, fruit, cattle, poultry*, and the like, but not for any thing that is of the *substance of the earth*, or is not of *annual increase*, as *stone, lime, chalk*, and the like; nor for creatures that are of a *wild nature*, or *feræ naturæ*, as *deer, hawks, &c.* whose increase, so as to profit the owner, is not *annual*, but *casual*.*]

By the *canon law*, if seeds be sown on the same ground, and renew oftener than once in the year, the tythes thereof shall be paid so often as they do renew. The *common law* holds, that *de jure* tythes are due of the *aftermath*, if not exempted by *prescription*: And by several determinations in the Exchequer, all tytheable matters are subject Gibs. 633. Roll. Abr. 640.

* This rule admits, nevertheless, of some exception. Tythe is due of *saffron*, though gathered but once in three years: so of *sylva cadua*, or wood of twenty years growth.—V. Gibs. p. 669.

to tythe as often as they yield a profit to the owner in the year.

Things deemed
free nature.
Digge, p. 2. c. 8.
2 Inst. 651.

By the *common law*, fish taken out of the sea, or out of a river, are not subject to tythe, unless by *custom*, as in *Wales*, *Ireland*, *Yarmouth*, and other places; nor of *conies*, or the like; but if the tythe thereof be due by *custom*, it must be paid.

Quarries.
2 Inst. 651.
Gibf. Cod. 669.
Mod. 903.

Of *common right*, no tythes are to be paid of *quarries* of *stone* or *slate*, for that they are *parcel of the freehold*; and the parson hath tythes of the *grafs* or *corn* which grew upon the surface of the land in which the quarry is; so also, not for *coal*, *twif*, *slag*, *tin*, *lead*, *brick*, *tile*, *earthen pots*, *lime*, *marl*, &c. because they are not the *increase*, but of the *substance of the earth*.

Forest lands.
Boh. 163. 177.
Gibf. Cod. 680.

Lands which are *extraparochial*, pay tythes to the King; so lands lying within the precincts of a *forest* (though also in a parish), if they be in the hands of the King, do pay no tythes; and this privilege extends to the King's *lessee*, but not to his *feoffee*. If the forest be *disafforested*, and be within any parish, then they ought to pay tythes into the hands of the King's *lessee*.

Park.
Gibf. Cod. 684.
Wat. c. 47.

It seems doubted, where a park hath paid a *modus*, and is *disparked*, whether the *modus* shall continue or be discharged, and tythes paid *in kind*; all the authorities seem clear, that if the *modus* were a *certain consideration in money*, for all the tythes of such a park, such *modus* shall continue, notwithstanding it be *disparked*. If the *modus* were for the *deer* and *herbage* of such a park, the *modus* is lost on the same being *disparked*, because there being no park, there can be no deer kept there.

End.

If the *modus* had been to pay a *buck* and a *doe* in lieu of the tythes of such a park, and the park be *disparked*, the *modus* shall continue, and the owner may give a *buck* and a *doe* out of *another park*; but if it were to pay the *shoulder* of every deer, or particularly a *buck* or a *doe* out of the *same park*, the *modus* is lost.

End.

Where the *modus* was part in *money* and part in *venison*, out of the park (namely, *two shillings*, and the *shoulder* of every deer), on *special argument*, the court was divided, two being of opinion that the *two shillings* continued, and that the *spiritual court* should assign an equitable recompense for the *shoulders*, according to the number that had been usually paid; and the other two, that the *money* and
venison

venison, making one entire *modus*, the one being gone, the whole was dissolved.

It has been determined, that the King is not, by virtue of his prerogative, discharged of tythes for *ancient demesnes* of the crown, but that as *persona mixta*, i. e. a *mixed person*, he is capable of a discharge *de non decimando*, by *prescription*, as well as a *Bishop*. If the King alien any of the lands for which he is so discharged of tythes, his *patentee* shall pay tythes; and the *prescription* is thereby destroyed for ever, although the same lands should afterwards come into the King's hands again by *escheat* or otherwise.

By statute of 2 and 3 *Edw. 6. c. 13. sect. 5.* "All such barren heath or waste ground, other than such as be discharged from the payment of tythes by statute, which have lain barren, and paid no tythes, by reason of the same barrenness, and now be, or hereafter shall be improved and converted into *arable ground* or *meadow*, shall, after the end and term of *seven years* next after such improvement is fully ended and determined, pay tythe for the *corn* and *hay* growing upon the same."

PROVIDED, "That if any such barren, waste, or heath ground hath before that time been charged with the payment of any tythes, and the same be hereafter improved or converted into *arable ground*, or *meadow*; the owner thereof shall, during the *seven years* next after the said improvement, pay such kind of tythe as was paid for the same before the said improvement."

f. 6. After *seven years* Here are no express words of discharge of the tythes during the *seven years*, though, by the reasonable construction, it is implied, and amounts to a discharge during the *seven years* which are to be accounted to commence immediately next after the improvement.

Barren. If it doth yield *some fruit*, and do pay tythes for *wool* and *lamb*, or the like, yet if it be *barren land*, as to *agriculture* or *tillage*, which this clause evidently meant to advance, it is within the act.

If the ground be not suited for tillage, yet if it be not *in its own nature barren*, it is not within the meaning of the statute. For example, if a wood be stubbed and grubbed,

Ancient demesne.
Hard. p. 315.
Mich. 14 Car. 2.

Barren land.

2 Inst. 656.
Bunb. p. 159.

grubbed, and made fit for the plough, and employed thereunto, yet it shall pay tythes presently; for woody ground is in its nature fertile, and not barren.

Land only is considered as *barren land*, that, *before the ploughing*, produced no profit to the owner.

Waste ground.
Bendl. 80. pl. 122
2 Eliz. Anon.
S. C. cited D.
170. b. Marg.
pl. 5.

Waste ground is such ground as no man claims for his own, or no man can tell to whom it certainly belongs, and lies uninclosed and unbounded with hedge or ditch; but ground that lies inclosed, and hedged and ditched in, so that the land is known, cannot be deemed waste ground.

Heath ground.

Heath ground is such ground as is dispersed, and lies in common.

Cro. Eliz. 475.
Pl. 3. 1

Where land is full of *thorns* and *bushes*, from time whereof, &c. and it is grubbed up and made *meadow* or *arable* land, tythes shall be presently paid thereof, notwithstanding stat. 2 and 3 *Edw. 6. c. 13.* for those lands were not *naturally barren*, but became so by *negligence* or *ill-husbandry*, and the statute extended only to *barren land made good by industry*.

Fenny land.

Fenny land, afterwards drained, is not exempted by the act.

Roll. Rep. p. 39.

Land which bears *broom* is not within statute 2 *Edw. 6.* for it is not *barren land*, and, therefore, if converted into *arable*, shall be chargeable with tythe.

Bull. v. 3. p. 156

If a man, at a great expense, gain land from the *sea*, which before was marshy and sandy land, and covered with salt-water, and afterwards convert it into *arable* land, he shall pay tythes presently, because this land is not *barren of its own nature*, but only by accident, by reason of the sand and salt-water overflowing it.

Lit. Rep. p. 311.

If sheep are kept on *barren land*, whereby it yields any profit to the owner, *this* makes it *tytheable*, and such tythe ought to be paid within the *seven years*.

2 Raym. p. 991.

Barren lands to be exempted from tythes within the true meaning of stat. 2 *Edw. 6.* must be such land as is barren, *suapte natura*, and on suggestion for a prohibition to a suit for tythes of such land, it must be alledged to be barren, *suapte natura*.

Born's Ecclesi.
Law, p. 388.

As to a *modus* or *customary* payment in lieu of tythes, it appears, that where *commons* are *divided*, *inclosed*, and *improved*, the *modus* can refer only to such tythes as the *common* yielded before its *improvement* and *division* into *severalities*;

veralties; as for the *agistment* of cattle, wool, and lamb, or such like; and not to the tythes of corn, hay, or other tythes accruing *de novo*, after the improvement. Where there is a *modus* in lieu of all the tythes of such an estate, it appears that such *modus* shall cover the *common appurtenant* to such estate, when *divided* into *severalities* and *inclosed*.

Note, *In stat. 2 and 3 Edw. 6. c. 13. sect. 6.* there are 2 Infl. p. 656. no express words of discharge of the tythes during the seven years, yet, by reasonable construction, it amounts to a discharge during the seven years; and the seven years are to be accounted next after the improvement.

A trial at law, whether lands are *barren* or not, within the meaning of the statute, must be had in the *temporal*, and not in the *spiritual* court; for in a suit for tythes in the *spiritual* court, if the defendant plead that it is *barren land*, and that plea be refused, or issue taken upon it, there a prohibition shall be granted: but a prohibition shall not be granted upon a suggestion only that it is *barren land*, before it be pleaded in the *spiritual* court. Degge, p. 2. c. 19.
1 Keb. p. 253.

GLEBE is a portion of land, meadow, or pasture, belonging to, or parcel of, the *parsonage* or *vicarage*, over and above the tythes. Glebe land.
Godol. Rep. p. 499.

If a parson sow his glebe, and die before the severance, and afterwards his successor is inducted, and his executor or vendee severeth the corn, the successor shall have the tythe thereof; for although the executor represent the person of the testator, yet he cannot represent him as a parson, inasmuch as another is inducted. Degge, p. 2. §. 2.
1 Roll. Abr. p. 655.

If the parson dieth *after severance* from the ground, before the corn is carried off, in this case the successor shall have no tythe, because, though it was not set out, yet a right to it was vested in the deceased parson, by the severance from the ground. The same doctrine holds in case of *deprivation* or *resignation* after glebe sown: the successor shall have the tythe, if the corn was not severed at the time of his coming in, but not if severed. Gibb. p. 662.

By the stat. 31 Hen. 8. c. 13. sect. 21. "Where divers abbots, priors, and other ecclesiastical governors of the monasteries, abbaties, priories, nunneries, colleges, hospitals, houses or friars, and other religious and ecclesiastical houses and places dissolved by, this act, have

“ have had divers parsonages appropriated, tythes, pensions, and proportions, and also were acquitted and discharged of the payment of tythes for their monasteries, &c. the King, and all other persons who shall have any of the said monasteries, &c. or any manors, messuages, parsonages, appropriate, tythes, pensions, portions, or other hereditaments, which belonged to any such religious house, shall hold and enjoy the same, discharged and acquitted of payment of tythes, as freely, and in as large and ample manner, as the said late abbots, priors, and other ecclesiastical governors, held and enjoyed the same.”

[Note, For a table of monasteries dissolved by the above statute, see after.]

C H A P. III.

Of Exemption from Payment of Tythes by Modus, Custom, and Prescription, &c.

The various means of exemption.

THERE are various ways whereby abbey-lands are holden discharged of tythes, as *composition*, *bull* or *canon*, *order*, *prescription of discharge*, and *unity* of possession of parsonage and land, time out of mind, &c.

Real composition.
Black, v. 2. p. 28

FIRST, a *real composition* is when an agreement is made between the owner of the lands and the parson or vicar, with the consent of the ordinary and the patron, that such lands shall for the future be discharged from payment of tythes, by reason of *some land*, or other *real recompense* given to the parson, in lieu of satisfaction thereof. This was countenanced by law, supposing that the clergy would be no losers by such composition; since the consent of the ordinary, whose duty it is to take care of the church in general, and of the patron, whose interest it is to protect that particular church, were both made necessary to render the composition effectual; and hence arose all such compositions as exist at this day, by force of the *common law*. But experience shewing that even this caution was ineffectual, and the possessions of the church being by this and other means every day diminished, the *disabling statute* 13 Eliz. c. 10. was made, which prevents, among other spiritual

spiritual persons, all parsons and vicars from making any conveyances of the estates of their churches, other than for *three lives*, or *twenty-one years*. So that now, by virtue of this statute, no *real composition* made since the 13 Eliz. is good for any longer term than *three lives*, or *twenty-one years*, though made by consent of the patron and ordinary: which has indeed effectually demolished this kind of traffic; such compositions being now rarely heard of, unless by authority of parliament.

SECONDLY, a discharge by *custom* or *prescription*, is where time out of mind such persons or such lands have been, either partially or totally, discharged from the payment of tythes. And this immemorial usage is binding upon all parties, as it is, in its nature and evidence, of universal consent and acquiescence, and with reason supposes a real composition to have been formerly made. This *custom* or *prescription* is either *de modo decimandi*, or *de non decimando*. Custom or prescription. Bl. vol. 2. p. 29-

A *modus decimandi*, commonly called by the simple name of a *modus* only, is where there is by *custom* a particular manner of tything allowed, different from the general law of taking tythes in kind, which is the actual tenth part of the annual increase. This is sometimes a pecuniary compensation, as *two-pence* an acre for the tythe of land: sometimes it is a compensation in *work and labour*, as that the parson shall have only the *twelfth* cock of hay, and not the *tenth*, in consideration of the owner's making it for him: sometimes in lieu of a large quantity of crude or imperfect tythe, the parson shall have a less quantity, when arrived to greater maturity, as a couple of fowls in lieu of tythe eggs; and the like. Any means, in short, whereby the general law of tything is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or special manner of tything. A modus

To make a good and sufficient *modus*, the following rules must be observed: First, It must be *certain and invariable*, for payment of different sums will prove it to be no *modus*, that is, no original *real composition*, because that must have been one and the same, from its first original to the present time; Secondly, The thing given, in lieu of tythes, *must be beneficial to the parson*, and not for the emolument of third persons only: thus, a *modus* to repair the What makes a good modus. 1 Keb. p. 602. Salk. 657. 2 Peere Wms. 462. 11 Mod. 60.

the church in lieu of tythes is not good, because that is an advantage to the parish only; but to repair the church is a good *modus*, for that is an advantage to the parson; Thirdly, *It must be something different from the thing compounded for*; one load of hay, in lieu of all tythe hay, is no good *modus*; for no parson would *bona fide* make a composition to receive less than his due in the same species of tythe; and therefore the law will not suppose it possible for such composition to have existed. Fourthly, One cannot be discharged from payment of one species of tythe, by paying a *modus* for another. Thus, a *modus* of one penny for every milch-cow, will discharge the tythe of milch kine, but not of barren cattle; for tythe is of common right, due for both; and therefore a *modus* for one shall never be a discharge for the other; Fifthly, *The recompence must be in its nature as durable as the tythes discharged by it*; that is, an inheritance certain; and therefore a *modus* that every inhabitant of a house shall pay four-pence a year, in lieu of the owner's tythes, is no good *modus*; for possibly the house may not be inhabited, and then the recompence will be lost. Sixthly, *The modus must not be too large*, which in law is called a *rank modus*: as if the real value of the tythes be *sixty pounds per annum*, and a *modus* is suggested of *forty pounds*; this *modus* will not be good, though one of *forty shillings* might have been valid. For, in these cases of *prescriptive* or *customary moduses*, the law supposes an original *real composition* to have been regularly made; which being lost by length of time immemorial, usage is admitted as evidence to shew that it once did exist, and that from thence such usage was derived. Now, time of memory hath been long ago ascertained by the law to commence from the reign of *Richard the First*; any custom may be destroyed by evidence of its non-existence in any part of the long period from his days to the present; wherefore, as this real composition is supposed to have been an equitable contract, or the full value of the tythes at the time of making it, if the *modus* set up is so rank and large, as that it beyond dispute exceeds the value of the tythes in the time of *Richard the First*, this *modus* is *felo de se*, and destroys itself. For, as it would be destroyed by any direct evidence to prove its non-existence at any time, since that *era*, so also it is destroyed

stroyed by carrying in itself this internal evidence of a much later original.

A *prescription de non decimando* is a claim to be entirely discharged of tythes, and to pay no compensation in lieu of them. Thus, the King, by his prerogative, is discharged from all tythes. So a vicar shall pay no tythes to the rector, nor the rector to the vicar, for *ecclesia decimas non solvit ecclesie*. These personal privileges (not arising from, or being annexed to, the land) are personally confined to both the King and the clergy; for their tenant or lessee shall pay tythes, though, in their own occupation, their lands are not generally tytheable. It is an established rule, that in lay hands, *modus de non decimando non valet*. Spiritual persons or corporations, as monasteries, abbots, bishops, and the like, were always capable of having their lands totally discharged of tythes, by various ways; First, by *real composition*; Secondly, by the *Pope's bull* of exemption; Thirdly, by *unity of possession*; as when the rectory of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of tythes by this unity of possession; Fourthly, by *prescription*; having never been liable to tythes, by being always in *spiritual hands*; Fifthly, by *virtue of their order*, as the *Knights Templars*, *Cistercians*, and others, whose lands were privileged by the Pope with a discharge of tythes. On the dissolution of abbeys by *Henry VIII.* most of these exemptions from tythes would have fallen with them, and the lands become tytheable again, had they not been supported and upheld by statute 31 *Hen. 8. c. 13.* which enacts, "That all persons who should come to the possession of the lands of any abbey then dissolved, should hold them free and discharged of tythes, in as large and ample a manner as the abbeys themselves formerly held them." And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tythe free: for if a man can shew his lands to have been such abbey-lands, and also immemorially discharged of tythes by any of the means before-mentioned, this is now a good *prescription de non decimando*. But he must shew both the requilites: for abbey-lands, without a special ground of discharge, are not discharged of course; neither will any *prescription de non decimando* avail

A prescription for not paying tythes.
Cro. Eliz. 479.
511
Hob. 309.
Cro. Jac. 308.

avail in total discharge of tythes, unless it relate to such abbey-lands.

Gibf. 673.

It must be observed, that there is a difference between *custom* and *prescription*; *custom* is that which gives right to a *province, county, hundred, city, or town*, and is common to all within the respective limits.

Ibid.

Prescription gives a right to some *particular house, farm, or other thing*.

The distinction
between custom
and prescription
Roll. Abr. 658.
Gibf. Cod. 674.

Custom and *prescription* are either *de non decimando*, or *de modo decimandi*. *De non decimando* is to be free from the payment of tythes, without any recompense for the same. Concerning which, the general rule is, that no layman can prescribe in *non decimando*, that is, to be discharged absolutely of the payment of tythes, and to pay nothing in lieu thereof, unless he begin his prescription in a religious or *ecclesiastical* person, and derive a title to it by act of parliament. But all *spiritual* and religious persons, as *bishops, deans, prebends, parsons, vicars* (as heretofore abbots and priors), may prescribe generally in *non decimando*, for they are more favoured than lay persons; for this is still in a *spiritual* person, and so nothing is taken from the church; for such *spiritual* person was capable of a grant of tythes at the *common law* in *permanency*. Hence it is, that the parson or vicar of one parish, that hath part of his glebe lying in another parish, may prescribe in *non decimando* for it, that is, to be free from the payment of any manner of tythe for the same.

This general rule, that none but *spiritual* persons or corporations may prescribe in *non decimando*, is to be understood with several exceptions.

Who are exempt
from tythes.

Gibf. Cod. 674.

Jones W. 387.

Mo. 483.

1 Roll. Abr. 653.

Degge, p. 2. c. 16

2 Rep. 78.

2 Salk. 655.

Ld Raym. 187.

1 Roll. Abr.

653, 654.

FIRST, That the King, as being *mixta persona*, i. e. a *mixed person*, may prescribe *de non decimando*; that as such he is capable of tythes.

SECONDLY, That the lessee, tenant at will, and coppyholder of a *spiritual* person, though a *layman*, shall, in this respect, enjoy the exemption of the lessor, who is supposed to reap the benefit of it, in reserving so much the greater rents, by reason of such exemption.

THIRDLY, That a county, or part of a county, may well plead a custom *de non decimando*, in respect of this or that particular tythe; as hath been pleaded and allowed

in

in the case of *tythe milk of ewes*; and of *tythe of under-wood* in the wild of Kent, and in forty parishes in the wild of Suffex. A single parish may not prescribe *de non decimando* for particular tythes; nor may any larger district plead a custom, absolutely to have their lands freed from the payment of all tythes, without any thing in lieu. And lest this allowance of a *custom, de non decimando*, to laymen, in any case, should seem to break in upon the general rule, the distinction which hath been laid down is this: That in things tytheable by *custom* only, and not *de jure*, a county or hundred may prescribe in *non decimando* generally; for in that case they are discharged, without a custom to the contrary; so that it is but to insist on the old right, against which the custom hath not prevailed; but for things which are tytheable *de jure*, a county or hundred cannot prescribe in *non decimando*, more than a particular person; for it would be absurd to say, that a hundred shall prescribe in *non decimando*, where the particular persons of which it consists cannot so prescribe.

It was long a question, whether a lay impropiator, as *Bumf. 274.* well as a clergyman, be entitled to recover the tythes, without proving payment: or whether a *non decimando* may be pleaded against a lay impropiator; but was at last determined, That a lay impropiator is under no necessity of proving payment of tythes unto him.

It has been determined in the Exchequer, that there can *Ibid. 325.* be no *prescription* in *non decimando* against a *lay rector* any more than against a *spiritual rector*; but that they are equally entitled to tythes of *common right*; and that it is sufficient for a lay rector to set forth in a bill brought, that he is seised of the impropriate rectory; and if he maketh out his title to that, it will be sufficient, without putting him to the proof of having received tythes.

If a vicar sue for tythes, and the parishioner, being a *Ough. Ord. Judg. 264.* layman, denies that the said tythes are due to him, in such a case, unless the vicar shall prove that the tythes in question are due to him by *endowment* or *prescription*, he shall fail in his suit: the reason is, because all the tythes *de jure*, or in presumption of law, *belong to the rector*, and therefore the vicar shall receive only those tythes which he enjoys by *custom* or *prescription*, or by the *endowment*.

Explanation de
modus decimandi.

Gibb. Cod. 674.
Degge, p. 2. c. 16.
3 Cro. 387.

A *modus decimandi* is, when lands, tenements, or hereditaments, have been given to the parson and his successors, or an annual certain sum, or other profit, always, time out of mind, to the parson and his successors, in full satisfaction and discharge of all the tythes in kind of such a place. It may be pleaded by the lord of a manor for the tythes of his manor, on account of lands of the gift of one who was lord of the manor, and held by the parson and his successors, time out of mind; and by a parish or hamlet, for this or that sort of tythe, by reason of lands enjoyed by the parsons time out of mind, within such parish or hamlet; and, LASTLY, by any private person for his own lands, or part thereof, in consideration of a certain sum of money or other recompense.

What makes a
good custom or
prescription.

Degge, p. 2. c. 16.

To make these a good *custom* or *prescription*, it must have the several qualifications following: As first; every *modus* must be supposed to have had a reasonable commencement, and in every *prescription de modo decimandi*, it is to be intended the rate tythe was the full value of the tythe at the time of the original composition; for it cannot be presumed that the *bishop*, *patron*, and *ordinary*, would make a composition to the prejudice of the church; and if the *modus* do not now reach the value, it is to be intended that either the tythes are improved, or else that money is now become of less value, which makes the present inequality.

A composition
real, what it is.

Gibb. 675, 676.

By *composition real* is meant where the present incumbent of any church, together with his patron and ordinary, do agree by deed under their hands and seals, or by fine in the King's court, that such lands shall be freed and discharged of the payment of all manner of tythes for ever, paying some annual payment, or doing some other thing to the ease, profit, or advantage of the parson or vicar to whom the tythes did belong. These *real compositions* have ever been held and allowed here in England to be a good discharge of the payment of tythes. From these all *prescriptions de modo decimandi* first took their rise and beginning; since the statute 1 *Eliz.* (in the case of *archbishops* and *bishops*), and statute 13 *Eliz.* (in the case of all other *ecclesiastical corporations*, sole and aggregate), it is agreed, that no *real compositions*, any more than *alienations*, can be made; since all grants are thereby expressly restrained and made void, which are not according to the tenor of these

these statutes. And the only *modus* that can grow now, must be from the inadvertency of the clergy, acquiescing in the self-same agreements, from one successor to another.

Where a *real composition* hath been made, if the lands discharged thereby be transferred or granted to another, the feoffee or grantee shall have the benefit of it. Ibid. Jones W. 369.

It is necessary to shew that the *modus* had at first a reasonable commencement; for these *moduses* having been from time immemorial, none can know but there were such circumstances in those *ancient* times as might have made such a composition reasonable, though at present they may not be discoverable. It is enough to satisfy us, at this great distance of time, that the *parson, patron, and ordinary*, before the *restrictive statutes*, might bind the revenues of the parson; and that all these *moduses* must have had their commencement from an instrument signed by the *parson, patron, and ordinary*; but there can be no colour to say that, because such instrument in so great a length of time hath been lost, there the *modus* shall be lost also. Indeed, so far the law hath gone in favour of the church, as that if the instrument which the *parson, patron, and ordinary* had given to a layman, owner of such a farm, to discharge the farm of all tythes, (though this would be good while the instrument could be shewn) should be once lost, this being a privilege in *non decimando*, the privilege would be lost by the loss of the deed. 2 P. Wms. 573; Gibf. Cod. 675.

The *modus* must be something for the benefit and interest of the parson, and therefore the finding *straw* for the body of the church; the finding a *rope* for a *bell*; the paying *five shillings* to the parson-clerk; the paying a *quit-rent* to the lord of the manor; when these have been urged as discharges from tythes in kind, the *moduses* have been held not to be good. Degge, 2, 16. Gibf. Cod. 674. Marsh, 65, 91. 1 Leon. 94. Siderf. 259.

The *modus* must not be one tythe paid in consideration of another; as it must not be to pay tythes of other kinds to be discharged of tythes for *dry cattle*; it must not be so much for every *cow and calf* for the tythe of *herbage*. Gibf. Cod. 574. Degge, p. 2. c. 16.

A *modus* must also be something in its kind different from the thing that is due; and therefore a *load of hay* in lieu of *tythe hay*, or certain *sheaves of corn* for all tythes of *corn*, is not a *good prescription*; but it hath been said Gibf. Cod. 675. Degge, p. 2. c. 2.

The Law of Tythes.

that this holds only in case the things are *de jure* tythcable, and not by *custom* only.

2 P. Wms. 572.

A *modus* must be certain, and if it is uncertain, no length of time will make it good. For example, a *prescription* to pay a *penny*, or *thereabouts*, for every acre of arable land, is void for the uncertainty.

Whitehall and
Offley, Trif.

5 Geo.

Lat. 8 Geo.

Goddard v.

Kable.

Many *moduses* have been set aside in regard that *no day of payment* was set forth by the defendant.

In the case of *Goddard, rector of Castle-Eaton in Wilts, v. Kable*, the defendant insisted upon several *moduses*, viz. *three-pence* for a milk-cow, *three-pence* for a lamb, *three-pence* for a colt, *one penny* for a garden, and the like; but they were all set aside, in regard no time for the payment thereof was ascertained by the defendant.

The general
maxim on
which a *modus*
is determined.

2 B. Eccles. L.

395.

The maxim these decrees go upon is, that *tythes in kind* being a provision made by law for the clergy, which become due at a certain determinate time, and which, if not then set forth, are immediately demandable, shall not be taken from them by an uncertain payment, which becomes due on no determinate day, and which they cannot know when to demand, or go about to receive, if it be withheld. Besides, that such uncertainty lays a foundation for many disputes.

A *modus* must be ancient, and therefore if it is any thing near the present value of the tythe, it will be supposed to be of late commencement, and for that reason will be set aside, as in the case of *Benson, impropiator of Bromley St. Leonard, Middlesex, against Watkins and others*. H. 3 Geo. the following *modus*, viz. *five shillings an acre* for tythe of winter corn; *four shillings an acre* for summer corn; *two shillings and sixpence an acre* for upland meadow; and *three shillings an acre* for low land, were set aside as too big.

Obf. Cod. 675.

1 Cro. 139.

A *modus* must be something *durable*, because the tythe in kind is an inheritance certain, and it is against nature that it should be extinguished by a recompense not as durable at least; though not so valuable; for this reason, *four-pence* to be paid yearly by two persons inhabiting two such houses, in consideration of all tythes, hath been adjudged ill, because the houses may decay, or none live in them.

Degge, p. 2.

d. 12.

Custom or *prescription* must be constant, without interruption, and perpetual, from the time whereof the memory of

of man is not to the contrary; for if there had been frequent interruptions, there can be no *custom* or *prescription* obtained; when such *custom* or *prescription* is obtained, a disturbance for *ten* or *twenty* years shall not destroy it.

It is not every consideration that will make a good *modus*, so a *modus*, though founded upon a good consideration, may be several ways discharged, and tythes become due in kind: (1.) Where land is converted to other uses; so when the *prescription* is for *hay* and *grass*, especially in so many acres of land, if the *land* is converted into *hop-garden* or *tillage*, the *prescription* is gone. (2.) By the alteration or destruction of the thing for which the money was paid; as where *two* *fulling-mills* were under the same roof, and turned into a *corn-mill*; where also there was *one* *pair of stones* in a mill, and another pair was added; and where the water-course was altered by the owner, and the *mill* was pulled down and re-edified upon it; in all these cases it has been *adjudged*, that the *modus* was gone. Where a man was seised of *eight acres of meadow*, and *one of pasture*, for the tythes whereof he had paid, time out of mind, *five shillings and four-pence*, and afterwards the owner built a *corn-mill* upon the same, it has been *adjudged*, that he should pay no other tythes for the *corn-mill*, because the land was discharged by the *modus*. (3.) By *non-payment* of the consideration, or payment of tythes in kind, for so long a time, as to destroy the possibility of making proof that such *custom* or *prescription* was: but an interruption for some short time only will not discharge it, especially if made by the lessee to the prejudice of the lessor.

The rule is, that the *modus* is to be sued for in the *ecclesiastical* court, as well as the very tythe; and, if it be allowed between the parties, they shall proceed there; but if the *custom* be denied, it must be tried at the *common law*; and if it be found for the *custom*, then a consultation must go, otherwise the prohibition standeth. The like is affirmed, in case a jury, upon an issue joined in a prohibition upon a *modus decimandi*, find a different *modus*: since a *modus* is found, they shall not have a consultation.

The principal reasons why the courts of *common law* prohibit the *spiritual* court from trying of *moduses* are, that whereas every *modus* is less than the real value, the rule of the *canon law* is, that less than real value shall not

What consideration will create a *modus*.
2 Inst. 490.
2 Gibf. 675.
1 Roll. Abr. 651.
Watf. c. 47.
Gibf. Cod. 675.
2 Bullst. 240.

2 Inst. 490.
Gibf. Cod. 691.

Reasons why courts of law prohibit the spiritual court from trying a *modus*.

Gibb. Cod. 691. be taken, and that a *custom* to the contrary is void: and that the *ecclesiastical* and *temporal* laws differ in the times of limitation; *forty years* or *under* making a good custom by the *ecclesiastical* laws, whereas by the *temporal* laws it must be beyond the time of memory.

How the spiritual courts proceed

Gibb. Cod. 697.

The *spiritual* courts have commonly allowed, and do allow, pleas of *modus decimandi*; and the averment in the prohibition is not that they do take cognizance, but that the plea hath been offered and refused; which supposeth, that if the plea be admitted, the prohibition ought not to go. It hath been affirmed by *Doderidge* and others, that the *spiritual* court may as well try the *modus* as the right of tythes; and that a prohibition is not to be granted till the *spiritual* court either refuse to admit the plea, or proceed to try it by methods different from the rules of the *temporal* law, as to the time of limitation, or number of witnesses, or the like. *Lord Coke* contended for the contrary doctrine. It was declared by *Kelynge* and *Twisden*, in the case of the *Bishop of Lincoln against Smith*, that in case on a libel for a *modus decimandi*, if the *spiritual* court allow the plea, they may try it.

Watf. c. 56.

It seems settled now, that if a *modus decimandi* be sued for in the *ecclesiastical* court, a prohibition lies to stop the trial of it, if the *modus* be denied; and the reason is, not upon the account that the *spiritual* court wants jurisdiction, but in regard of the notion the *temporal* law hath of *custom* different from the *spiritual*. Every *modus* is due by *custom*; it is the *common law* only that can determine what time and usage with us shall be sufficient to create such a *custom*; that is, time beyond all memory to the contrary. Whereas, by the *spiritual* law, sometimes *ten years*, sometimes *twenty*, they will *quajudge* sufficient to create a custom. Prohibitions in such cases are granted; not because the *spiritual* court hath not jurisdiction of the matter, but in respect of the trial, which is to be by the *temporal* law only: and if upon the trial it be found for the *modus*, the proceedings shall go on in the *spiritual* court; if against the *modus*, the prohibition shall stand.

CHAP. IV.

Of Things tytheable, and Things not tytheable.

ACORNS.

THESE (which are considered under the name of *Gibf. Cod. 676* *massis*) are the chief of those things which the *ancient* laws call *pannage*.

Maft of oak, or beach, if fold, the *tenth penny* is payable for the tythe thereof; but if eaten by *swine*, then the *tenth value* or worth thereof.* *Maft of oak or beach. Godolph. 417. Lindow. 200.*

Acorns seem not different from that of other things tytheable; when gathered, they shall pay tythes in kind; and the *tenth penny*, or *two shillings* in the pound, in all such like cases, is not to be considered as exclusive of the tythes to be paid in kind, but only as reasonable satisfaction, when the parishioner dispose of his whole produce unsevered. Where the acorns are not gathered by the owner, but suffered to be fed upon as they drop, this case seems to fall under the same equity as where *turnips* are fed on by unprofitable cattle, for which an agistment tythe shall be paid.

AFTERMOWTH.

The rule laid down by *Rolle* is that of *after-mowth*, *1 Roll. Abr.* that is, the *second mowth*; tythes shall be paid *de jure*, *640.* without a *special prescription*, to be discharged by payment of the tythes out of the *first mowth*, and then it shall be discharged.

Sir Simon Degge held, that tythes are not to be paid *Degge, p. 2.* of the *after-mowths* of meadows, unless if the meadow-^{c. 3.} ing be so rich that there are *two crops* of hay got in *one year*, then the parson shall have tythe as well of the *latter* as of the *former crops*.

If the occupier of the land can *prescribe*, that in consi- *1 Roll. Abr.* deration the owner doth make the *first tonsure* into good *648.* and sufficient hay, and let it forth in cocks sufficiently *Morr. 910.* dried, then he shall be sufficiently discharged of the tythes of the *after-mowth*; this is a *good prescription* and dis-

* No tythe is due of acorns eaten by the owner's pigs. *Plowd. Law of Tything, p. 117.—1806.*

charge,

charge, by reason of the labour and cost he bestowed in making the *first tonsure* into *hay*.

Cro. Jac. p. 42. If the *prescription* be, to be discharged of the tythe of the *after-mowth* only upon consideration that they have used, time out of mind, to cut down the grass of the *first-mowth*, and the same to add and shake abroad: and the same grass so dispersed and cast abroad together into ricks and winnows, and put into small cocks at their own costs; this is sufficient, though it be not made into *perfect hay*.†

AGISTMENT.

Agistment what it is. *Agistment* is the keeping or depasturing of sheep, and every other kind of tame cattle, or beasts.

This tythe is the tenth part of the value of the keeping or depasturing of such *sheep*, *cattle*, or *beasts*, for the time they are *levant* and *couchant* upon the land.

It is due *communis jure*, as well as the tythe of *corn* or *hay*; it has this peculiar difficulty attending it, viz. that it cannot be taken in *kind*. For as it is no otherwise cut or mown, than by the mouth of the animal, along with the other nine parts, and consumed at the same time, the person to whom it is due can only receive the *value* of it.

Sheep pay agistment tythes, *All sheep* are liable to pay this tythe, from the time of their *last shearing* till the time they are slaughtered, sold, or removed out of the parish.

As do beasts, horses, and heifers. *All beasts* and *horses*, not actually yielding milk, nor employed in husbandry; *heifers*, from the time of their being weaned till they *calve*; or should they be sold, or removed out of the parish before they *calve*; then from the time of their being weaned till the time they are so sold or removed out of the parish.

Steers. *Steers*, from the time of their being weaned till they are killed or sold out of the parish, whether *fat* or *lean*, except during such time as they are actually worked at the *plough* or in the *team*.

Horses. *Horses*, whether *colts* or *fillies*, are likewise liable to pay this tythe from the time of their being able to live without the mare.

† Although it was formerly holden that no tythe should be paid of the after-pasture of the meadow-land that had been mowed within the year, yet it has been determined in the case of *Bateman v. Aistroppe and others*, that such after-eauge of the latter mowth is tytheable.—*E.*

Colts, till they are sold or removed out of the parish, *Colts*.
or employed in the business of husbandry.

Fillies, till they are so employed, or bear foals.

Fillies.

All such *sheep*, *beasts*, and *horses*, (the two last of which are commonly comprehended under the general denomination of *barren* and *unprofitable cattle*) are to pay a tythe for their agistment during the time they have been so kept in any parish, according to the value of the keeping of each *per week*.

The two general rules for payment of agistment tythe are,

1st. *The parson is entitled to the tenth part of the produce of the land,† or the value of it.*

2dly. *As often as a new increase arises, so often a new tythe becomes due.*

This rule is rather a consequence from the former than an independent proposition.

The *first* of the *two general rules* above laid down will rectify a mistake, which many, both of the clergy and lay tything-men have fallen into respecting *agistment tythe*, who have imagined that the persons to whom this tythe is due are entitled to the *tenth part* of the profit which the occupier of the land may at any time receive for the keeping of his *sheep*, *beasts*, and *horses*.

On this tythe the parson is only entitled to the *tenth part of the produce of the land, or the value of it*; he has no claim upon the occupier or owner of the stock for any part of his profit; whether the occupier gains or loses, or what he gains or loses, by the keeping of his stock.

For example; if a farmer in the spring have a dozen beasts of equal value or price, which he sells off the latter end of the year; some for *five pounds* profit, other for *forty shillings*, the rest for none at all. The tything-man being entitled to no part of it, has no right to be resolved as to the particular profit he received from the keeping of each, but only to the *tenth part* of the value of the depasturage of each *per week*. If they were all kept upon the same land, or of the same goodness, they ought all to pay alike for the tythe of their *agistment*; those from which the occupier received no profit, or even was a loser by, as those from which he received the most;

† This produce comprehends all cases where the tythe can be taken in kind, as in *hay*, *corn*, &c.—The value where it cannot, as in *agistment*.—E.

the

The Law of Tythes.

the improvement or *non-improvement* of the beasts depending solely upon the skill or ignorance of the occupier, in which the tything man has no concern, and in which therefore, as he runs no hazard from the one, he ought to reap no advantage from the other; which may be exemplified thus:

1st. *Of profitable and unprofitable stock kept together.*

2dly. *Of the same lands paying tythes several times in the same year.*

3dly. *Of the same stock, paying several different tythes of their agistment in the same year.*

It very seldom happens, that an occupier of land stocks his particular pastures or fields either with all profitable or all unprofitable stock. They are generally kept together: but this need occasion no difficulty, much less any dispute, in ascertaining the tythe of those which are liable to pay it for their agistment. So many, and such stock as are so liable, which have been kept upon such lands, are to account for their tythe according to the value of the keeping of each *per week*, the same as if there had been no other stock kept upon such lands along with them; and such other stock as are profitable, viz. *milch-cows, mares with their foals, ewes and lambs, and working horses*, and therefore not liable to pay this tythe, are to account for their tythe in a different way, either in kind or by *modus*, for each, as follow:

“Where profitable and unprofitable cattle feed together, tythe shall be paid in kind for the profitable, and agistment for the unprofitable.”

For example; an occupier of land mows any of his pastures in *July*, and pays the tythe of the hay in kind; at the proper time he turns feeding beasts upon the *eddish* or *after-grass*, which must pay the tythe of their agistment during the time they are kept upon it, according to the value or usual price of the depasturage of such beasts *per week* upon such *eddish* or *after-grass*, in a parish or neighbourhood.

After the *eddish* is consumed and eat up by these beasts, and other barren and unprofitable cattle are put and kept upon these same pastures from that time till the next accounting day, they must pay the tythe of their agistment during the time they have been so kept upon those pastures, according to the keeping of each such beast or horse

horse *per week*, upon such lands at that time, and in that state.

Where the same land has paid three different tythes, or tythes three different times in the same year, viz.

1st. *Hay in kind.*

2dly. *Agistment tythe for the eddish or after-grafs.*

3dly. *And for the grafs after the eddish was eat off.*

For example ; a grazier shears all his sheep the beginning of *July*, and, after paying the tythe of their *wool* in kind, in order to feed those that will be fit for sale that year, turns them for *two months* upon the *eddish* of lands, which have before in the same year paid tythe of *hay*, in kind. The *eddishes* in that time being consumed, these *sheep* are turned for *three months* more upon his best feeding *summer-eaten lands* : and from that time put upon *turnips* for *two months* more ; and, being then fat, are sold to the butcher, or removed out of the parish for sale.

In this case, these sheep must in the same year pay the several following different tythes, viz.

1st. *Wool in kind.*

2dly. *Tythe of agistment.*

From the time they were shorn till sold for slaughter, or removed out of the parish for sale, viz. *seven months*, according to the value of the keeping of each sheep *per week*, whilst kept upon such.

1st. *Eddish or after-grafs.*

2dly. *Summer-eaten land.* And

3dly. *Turnips respectively.*

Turnips when eaten.

1st. *By sheep removed out of the parish before their next shearing.*

2dly, *By such sheep as are kept afterwards in the same parish till shorn.*

3dly. *By both sheep and beasts, both profitable and unprofitable.*

In several counties great quantities of turnips are grown every year ; in others, the common or town field is, by agreement of the several occupiers, entirely turned every fourth year.

Turnips are generally eaten by sheep of some kind or other.

By feeding sheep, which some months after the time of the last shearing are turned to feed upon turnips, and when

when so fatted are all slaughtered, sold, or removed out of the parish before they are shorn again.

In this case, where the turnips are not consumed by the occupier's own *sheep*, but by those of some other person, either of the same or any other parish, taken in to keep for hire, either at so much *per week each*, during their being so kept, the *tenth part* of the bargain is due to the tything-man, payable by the owner of the turnips, not by the owner of the sheep.

But where the turnips are eaten by the occupier's own sheep, the tythe must be estimated; either

1st. *According to the value of the turnips per acre.* Or,

2dly. *According to the value of the keeping of each per week of the sheep which have eaten them.*

Turnips are sometimes eaten by *ewes* or *lambs*, or both, which are afterwards kept in the same parish till after they are shorn again.

In this case, whether such turnips are eaten by the occupier's own sheep, or by those of any other person, no tythe of agistment for the keeping of such sheep, nor in any respect for such turnips, is due; since the sheep which consumed them were kept in the parish till they yielded to the proper tything-man the tythe of their *wool*, or the *customary modus* or *composition* for it.

Where turnips are eaten by sheep, some of which are slaughtered, sold, or removed out of the parish before; others kept till after they are shorn; or, where any kind of cattle, whether *profitable* or *unprofitable*, or *both*, are kept upon turnips along with sheep: in all such cases, the tythe of agistment due can only be ascertained from the value of the keeping of each such sheep as were sold or removed out of the parish before shearing: and of the *barren* and *unprofitable* cattle *per week*, during the time of the keeping of each upon such turnips, since the last accounting day, in the same manner as where all such *sheep* and *barren* and *unprofitable* cattle have been kept together upon grass land, as instanced before.

Begge, p. 2. If a foreigner, that lives in another parish, depastures
c. 5. Ld Raym. ground for cattle bred to the plough and pail, to be em-
p. 129. ployed in a foreign parish, he shall pay tythe for the agist-
ment of such cattle.

Gibb. Cod. p. If the same cattle are turned off to be fatted, and are
676. Show. Ca. grazed there, tythes of agistment shall be paid, since they
p. 193. are

are no way beneficial to the parson in any other tythes. The same doctrine holds of *cows* after they are become barren, and are fatted for sale.

Horses, while they are kept for the use of husbandry, no tythe shall be paid; if for sale, or to carry coals, or for any other use that yields a profit to the owner, and not profitable to the parson, tythe shall be paid for them. Horses.
Gibf. Cod. p.
676. 1 Roll.
Abr. 646.

For *saddle-horses* of travellers, or others taken in as *guests horses*, it has been determined that tythe of agistment is due, because no profit otherwise accrues to the parson from such cattle. Saddle-horses.
Bunb. 3. 1 Roll.
Abr. 641.

The tythes for depasturing unprofitable cattle ought to be paid by the occupier of the ground, and not by the owner of the cattle. Agistment tythe
by whom to be
paid.
Bun. 3.
Roll. Abr. 656.
Degge, p. 2. c. 5.

If the occupier of the ground were not in such case made liable, it would be greatly inconvenient for the parson to sue every owner of the beasts, and perhaps it would be hard to be known, and the trouble and expence would be infinite.

If it is a common that is depastured, the owner of the cattle (if known) must pay the tythes, and not the owner of the soil, for the owner of the soil hath no profit by it. Bun. 3.

If *tythe of agistment* is refused, a suit may be commenced in the *spiritual* court against the occupier of the land; if for *guest cattle*, it may be brought either against the occupier of the land, or owner of the cattle.* Remedy for re-
fusal.
Gibf. Cod. 677.
Hardw. 184.

ALDERS.

Tythe of *alders* shall be paid, although they be of *2 Cro. 193* twenty years growth, and more. *5 Jac. 1.*

ALTARAGE.

It was determined (according to the definition of *altarage*, given by the Bishop of London, upon conference with the judge of the admiralty, the dean of the arches, and four other doctors of the *civil law*) that by altarage were understood tythes of *wool, lambs, colts, calves, pigs, goslings, chickens, butter, cheese, hemp, flax, honey, fruits, herbs*, and such other *small tythes*, with offerings, that shall be due within the parish where produced. Gibf. Cod. 677.

* See Tythe-tables, at the conclusion.

APPLES.

Flower, on
Tythes, p. 120.
Ed. 1800.

If the owner suffered another to pull his apples, the parson shall have tythes; *otherwise*, if they be taken by persons not known, (for they are not tytheable before plucking) unless they are taken after the proper time of gathering, through the neglect of the owner in letting them hang too long: [The *tenth* part should be separated from the *nine* parts where they grow, and tythe should be paid of such as fall from the trees.]

ASH.

Gibf. Cod. 677. This is determined to be timber, and so tythe free, being of or above *twenty years* growth.

ASP TREES.

Ibid.
2 Roll. 83.

These (with *beech* and *cherry*) have been deemed timber, and tythe free, in *Buckinghamshire*, where, in the beginning of last century, timber was scarce, and further, at that time this wood was used for making arrows for the defence of the realm. *Sed quere* now.

BARK.

Gibf. Cod. 677.
Flower, Tythes,
121.

Where the tree is a *timber-tree*, it shall pay no tythe, being privileged by the body of the tree: thus no tythe is payable for hop-poles, but no tythe is due of bark of wood of above *twenty years* cut and corded.

BEANS AND PEAS.

1 Roll. Abr.
547-
Degge, p. 2. c. 3.

Where a person gathers *green peas* to spend in his house, and there spends them in his family, no tythes shall be paid for the same; *otherwise* if he gathers them to sell, or to feed hogs, in that case they become tytheable.

Bunb. 169.

Note. *Beans* and *peas*, set and planted in rows, are deemed *small-tythe*; they are payable to the *impropriator*, if the vicar cannot shew an endowment or usage to the contrary.†

† In the case of *Mantell v. Payne*, 4 Gwill. 1; 104 A. D. 1798. Lord Mansfield held with respect to *peas*, that as there was no specific mode of tything that article, to be found in the books, it was necessary to resort to principle—the tythe must be set out as soon as it came into proper divisions or parcels, so as to let the *tenth* be seen and husbanded, See Tythe-tables.—E.

By

BEECH.

By the *common law* this is not timber, and ought therefore to pay tythe, of what growth soever it be; where it hath been pleaded, that, by reason of the scarcity of timber in this or that county, (as Buckinghamshire, &c.) they are forced to use it for timber; the court hath adjudged it to be privileged by *stat. sylvæ cædua*. Gibf. Cod. 677
1 Mod. 54.
1 Roll. 358.

BEEES.

These are reckoned among those things that are *feræ naturæ*, or in their wild state, and tythe free, yet, being gathered into hives, they become the property of some particular person, and then lose that privilege, and are tytheable.

It has been determined, that the tythe due for them shall not be paid in kind by the *tenth swarm*, but that the *tenth measure of honey*, and the *tenth pound of wax*; shall be sufficient. 1 Roll. Abr.
651.
3 Cro. 404.

BIRCH.

Determined, that tythes of birch shall be paid although of *twenty years growth*. Mo. 907.

BROOM.

This is tytheable, though dug up in order to clear the land for tillage, but otherwise if used for husbandry. Gibf. Cod. 67.
Flowd. 121.

CALVES.

Of *common right*, the *tenih* calf is due to the parson, to be taken when it is weaned; and not before; the *spiritual* court have determined, that if there are but *seven*, the parson shall have *one calf*; if under *seven*, then a *half-penny*, or what custom shall direct, for each calf. The *canon law* has left it to the choice of the parson, when they are under *seven*, whether he will proceed in that manner, or let them run on till *one become* due in the ensuing year; the *common law* will not allow of this, because tythe must be paid *annually*; and so, when the parson sued for a *seventh* calf, becoming due in that manner, a *prohibition* was granted. Gibf. Cod. 678.
1 Roll. Abr.
648.

Where there are *above ten calves*, lambs, pigs, or the like, the tythe of the odd number *above ten* shall be paid

D

for

for according to the value, and not carried over to the next year.

Gibf. Cod. 678. A custom of paying the *tenth* part of the price for every calf that is sold, is a good custom.*

1 Roll. Abr. 648.

CATTLE ON WASTE GROUND.

Gibf. Cod. 678. The tythe of cattle feeding upon wastes or commons, where the bounds of parishes are *uncertain*, shall be paid to the incumbent where the owner inhabits, according to stat. 2 Edw. 6. cap. 13. unless exempt by *custom* or *prescription*, and limited to some certain incumbent.

Sav. 60.

CHALK, AND CHALK-PITS,

1 Inst. 651. Not subject to tythe, being of the substance of the earth, and part of the freehold.

1 Mod. Rep. 85.

CHEESE.

Gibf. Cod. 678. Tythe of *cheese* can only be due where tythe is not paid of the *milk*; and payment of the *tenth-cheese* in one part of the year; for example, from *May-day* till the *first of August*, may be a good *prescription* for the discharge of tytheable milk for the whole year.

1 Cro. 608.
Mod. 909.

CHERRIES AND CHERRY-TREES.

Bunb. 184. Have been held to be subject to tythe, but *cherry-trees* in the 17th year of Jac. 1. were held to be *timber-trees* in *Buckinghamshire*, and not subject to tythes, *sed quere* now.

Gibf. Cod. 678.

CHICKENS.

Gibf. Cod. 678. These are only tytheable, when the eggs were not tythed

Plowd. 122.

CLAY.

2 Inst. 63. This is not subject to tythe, being of the substance of the earth.

Marsh. 55.

CLOVER.

Gibf. Cod. 405. Held, that if a man sow his land with *clover*, and make his profit of the seed, this being a grain, the parson

Skin. 341.

* For the distinction of cattle as *tytheable* or *not tytheable*, See article ACISTMENT OF CATTLE, p. 26.

shall

shall have a tythe of it; if it is converted into *hay only*, and make his profit of the *hay*, the vicar being endowed of tythes of *hay*, shall have it as a *small tythe*.

Clover and *vetches*, cut *green*, and given to cattle used in husbandry, appears not subject to tythes.*

Clover used for cattle in husbandry.
Bunb. 279.

CLOVER-GRASS.

Clover-grass shall go to him that hath the tythe of hay. Watf. c. 39^d

Where the vicar is endowed of *tythe hay*, decreed, that he was thereby intitled to *clover*, *sainfoin*, and *rye-grass*, which are species of *hay*, it being the *genus*. Bunb. 79.

CLOVER-SEED.

Clover-seed, which is in its nature, a *small tythe*, is not to pay tythe at the mill, but the *tenth* part of the stock is to be set out in the field after it is severed from the ground. Lloyd v. Bentley, 4 Gwill. 1615.

A *modus* may extend to *clover*, although of late only brought into *England*, if the *modus* be such as covers all tythes of hay. Ibid.

COAL.

This is exempt from payment of tythes, being of the substance of the earth, unless due by *custom*. Gibf. Cod. 678. 2 Inst. 681.

COLTS. See *Calves*.

CONIES.

These being *feræ naturæ*, are not tytheable of *common right*; if they are fued for, it must be on the ground of *custom*. Gibf. Cod. 678. 2 Roll. 458. 1 Keb. 602.

The distinction is, that conies *spent in the house* shall not pay tythe, but such as are *sold* shall; the same doctrine has been frequently held as to *pigeons*. 2 Keb. 141, 487. Gibf. Cod. 679.

CORN.

This is deemed a *predial* great tythe, and is tytheable according to the custom of the place; it is usually tythed 393.

* In a late case, viz. *Mantel v. Payne*, 4 Gwill. 1504. determined that this exemption to depend upon the sufficiency of other food for such cattle.—B.

by the *tenth shock, cock, or sheaf*, where the custom of the place is not otherwise.

How tythe are
to be set out.
Watf. c. 49.

[The owner of the corn ought to cut down and prepare the same, and to make it up into *sheaves, cocks, or shocks*; if the owner refuse to do it, the parson may sue him for the same in the *spiritual* court; though the suit must be laid *pecially*, viz. *for not setting them forth in cocks*, and not *generally*, for not setting them forth. If the corn is made into sheaves, he is not bound to set it up in heaps, unless the custom of the place oblige him thereunto; but having bound it into sheaves, or made it into cocks, he may set forth the tythes thereof, and thereby they become lay chattels, and then he may heap his own sheaves, or do with them as he pleases, and the tythes being set forth, the owner is not bound to watch or look after them till the parson carries them away.

Where custom
governs.
Watf. c. 49.
a P. W. 659.

If the custom of the place be, to measure forth to the parson the *tenth part* of the corn whilst growing upon the land, it seems that this manner of tything ought to be observed; or if the custom be, that the parson ought to have for his tythe of *corn* the *tenth land* of corn, beginning at such land as is next to the church, this custom is good.

Watf. c. 49.

If the custom be, that if the odd *sheaves* or *shocks*, under the number of *ten*, shall not be tythed, by reason that they set up the tythes in *heaps* or *shocks*, which of *common right* the owner of the corn is not bound to do; the owner is not bound to divide the said *sheaves* or *shocks*, and set forth the *tenth* thereof; for that such custom upon such consideration is good]

Cows. See *Milk*.

DOTARDS.

Gibb. Cod. 679.
Mod. 988.
a Cro. 101.

Dotards, which are old decayed trees, having been once privileged, as *sylva cædua*, shall not pay tythes, though afterwards they become rotten, and are cut down for the fire; and yet it is certain the foundation of the privilege, (viz. their usefulness in the way of timber) is gone; and so the privilege, if it subsist at all, must subsist without foundation; and though *More* reports the case as clearly determined, *Coke* says the court was divided.

These

DOVES.

These being kept in a *dove-house*, may pay tythe, by *Gibf. Cod. 679.*
custom, but if sold they shall pay tythe. *Plowd. 125.*

Determined, that the paying *thirty eggs* in *Lent* is a *Where paying a*
good modus for all tythes of eggs. The *general rule* is, *of eggs is a good*
 that where tythe is not paid of *chickens*, there it is due *modus.*
 of *eggs*; and the *modus* just now mentioned seems to *1 Roll. Abr.*
 cross the rule of the law, that every *modus* ought to be *648.*
 somewhat (as to kind) different from the thing that is due. *2 Salk. 656.*
 If a certain number of *sheaves*, for all *corn*; or a *load* of
hay, for all *hay*, it is ill; it seems by no means clear
 how *thirty eggs* for all eggs can be good, allowing them
 to be things that are *de jure* tytheable, which is not denied.
 But the distinction here taken is, that the *thirty eggs* are
 to be paid whether he had *hens* or no, and also are to be
 paid at a certain time; and so that payment, in the man-
 ner of it, differs from the payment of the tythe.

EGGS.

These are either tythed in kind, according to the custom
 of the place, which serves for the tythe of the tame and
 domestic fowl, where their young are not paid in kind;
 and where tythe of eggs is paid, there is no tythe of the
 young, and *vice versa*,

ELM.

This is deemed to be timber, and within the privilege *Gibf. Cod. 679.*
 of *sylva cædua*, or wood of *twenty years growth*, so as to
 pay no tythe, if it be of or above *twenty years growth*.

FALLOW,

Determined, that if the parson hath had tythe-corn *Gibf. Cod. 679.*
 one year, and the land lies *fallow*, without sowing, the *1 Roll. Abr.*
next year, in order to be ready for ploughing or sowing *648.*
 the *third year*, that the parson shall not have tythe for
 the *second year*; because its lying fallow meliorates the
 land, and gives the parson a larger tythe the *third year*,

FENS,

Being drained, shall not be privileged for the *first seven* *Ibid.*
years, under the name of *barren land*.

FISH.

No tythe can be demanded of *fish* caught in the *sea* or *4 Sw. 1581.*
D 3 *in Plowd. 124.*

in rivers, nor even in ponds, and in rivers inclosed and not common, which being reckoned *feræ naturæ*, are not of right tytheable.

Fish tytheable
by custom.
Bunb 43.

On a question as to tythe of fish due by custom; which custom was laid for all fish taken at sea, and brought to land, and sold within a certain parish, and also in another port: determined, that in case a double tythe may be payable, not only in another port where the fish is sold, but also where the fisherman inhabits; to which three barons, against the lord chief baron, said it was a good custom; for one tythe may be paid by custom, and one of common right.

FLAX.

Gibf. Cob. 680. Adjudged a small tythe, notwithstanding its being sown
1 Roll. Abr. 637. in large fields.*
2 Lev. 365.

Skin. 341, 355.
Garth. 263.
Gibf. Cod. 680.
Mod. 599.
1 Roll. Abr.
642.

FOWLS.

By this name are commonly understood hens, geese, ducks, and turkies, &c. which are subject to pay tythes, either in eggs or in the young, according to custom, but not in both.

FRUIT.

Ibid. and 2 Inst.
652.

Of apples, pears, plums, cherries, and the like, when gathered, tythe in kind is due. Lord Coke says, fruit-trees, if they have paid tythe fruit, and be cut down and sold in billet or faggot, they shall not pay tythe; for the fruit and tree be not of several kinds; but quere, as they yield profit to the owner, which is the established rule for creating a tythe to the parson.†

FUEL.

Ibid. 1 Cro.
609.
Mod. 909.

Adjudged, that fuel of any kind that is spent in the parishioners own houses are not subject to tythe.‡

* By 11 and 12 W. 3. c. 16. Every person sowing hemp or flax, shall pay to the parson, vicar, or impropriator, yearly, after the rate of five shillings per acre before the same shall be carried off the ground; for the recovery of which money, the parson, &c. shall have the usual remedies at law. — E.

† It has since been determined, that the trees shall pay tythes, Grant v. Hedding and Ball, Hard. 380, A. D. 1664. — E.

‡ It has since been determined, that fuel used in drying hops shall pay tythes, 1 Freem. 334. — 1698. — E.

If

FURZES.

If a person keeps a house of *husbandry*, and makes it appear that he used the *furzes* for *fuel*, or to make *pens* for his *sheep*, no *tythe* shall be paid; but otherwise if fold.

Ibid. 1 Mod.
609.
3 Keb. 635.
Litt. 267.
Hill. 1723.
Bunb. 144, 145.

GARDENS.

These pay *tythe* of *herbs* and *plants*, as *parsley*, *sage*, *cabbage*, *turnips*, *saffron*, and the like, which are deemed *small tythes*, and may be demanded *in kind*; usually a certain consideration is paid for *these things*, either by *custom* or by *agreement* with the parson. If the *custom* be a *parochial custom*, or extending to gardens throughout the parish, the enlargement of a garden doth not make *tythe* due in *specie*; but otherwise if it was a *special prescription* for *this* or *that garden*. And the same doctrine holds as to *orchards*.*

Gibf. Cod. 680.

GLASS-HOUSE.

Determined, that the profit of a *glass-house*, which grows by the *labour* and *industry* of man, shall not pay *tythe in kind*.

Gibf. Cod. 680.
Litt. 314.

GRAVEL.

This is not subject to *tythe*, as being of the substance of the earth.

Gibf. Cod. 680.

HAY.

Of *hay*, mown to feed *deer*, *tythes* are due of *common right*, and shall be paid, unless there be a *custom* to the contrary.†

HAZLE.

Hazle, *holly*, *willow*, *white-thorn*, &c. being sued for in the *spiritual court*, a prohibition was moved, and obtained; on the suggestions, that they were of *twenty years growth*, and more; and, by the *common custom* of the place, were used for *timber* to build and repair their *ploughs*.

* All garden-ground in England shall pay *tythes* for the different crops; and turnips, when they are pulled out pay *tythes*, though never so often sowed, and though upon the same land. Bunb. 10.

† Hay is of common right *tytheable* in swathes, wind-rows, or cocks, according to the custom of the place. — &c.

HEAD-LANDS.

Gibf. Cod. 681. *Determined* a good discharge from the *tythe of hay*,
 2 Leon. 70. upon the *head-land*, that the owner reaped, bound, and
 shocked the corn; on supposition that the tenth ridge is
 the thing due for the tythe, and that the labour of the
 owner about the corn (to which he was not bound) was
 a good foundation of such discharge.

Gibf. Cod. 681. A custom for *head-lands* sown with corn to be dis-
 charged of tythes, because sown with *plough-cattle*, or
mowed and cut for that purpose; adjudged a *good custom*.

HEMP.

This pays as flax by statute, which see *antea*.

HOLLY.

Gibf. Cod. 681. This tythe shall be paid, though above *twenty years*
 2 Cro. 199. *growth*, unless on a special suggestion of scarcity of tim-
 Mod. 30. ber to build and repair their ploughs.

HONEY.

Gibf. Cod. 681. *Resolved*, that tythe of *honey* and *wax* ought to be
 paid in *kind de jure*; and it is accounted a *predial tythe*.

HOPS.

Hops, what they are. On a question for hops in *Kent*; adjudged, that they
 Gibf. Cod. 682. were *great tythes*; but as for hops in *orchards* or *gardens*,
 Hutt. 78. these were resolved to belong to the vicar, as *minuta
 decima*.*

Bunb. 79. On a case where the vicar was endowed of *small tythes*,
 agreed that he was thereby intitled to *hops*, being a *small
 tythe*, though of growth since the endowment.

Gibf. Cod. 682. On a question whether a *modus* may be pleaded to be
 discharged of tythe of hops, 22 Car. 2. the suggestion
 was, that they paid so much *an acre* for *tythe-hops* time
 out of mind: the court denied a prohibition, because *hops*
 in *England* (whether brought in during the reign of
Hen. 8. or of *Queen Elizabeth*) were much later than
 the time of memory, and therefore no *prescription* could
 be pleaded.

Watf. c. 491. A *prescription* to pay so much in lieu of all *small tythes*
 Bunb. 20. may include *hops*, and other such small things which
 have come in use of late years.

* Hops pay a predial tythe, and regularly are accounted among small
 tythes.

In the case of *Walton v. Tyers*, in the *Exchequer*, on 2 B. E. L. 419. appeal in the House of Lords, on solemn argument, determined, that the *tythe of hops* by law ought to be set out by *measure*, after they are picked from the bind or stem; and the decree was affirmed by the Lords.

HORSES.

Of *saddle-horses*, kept for pleasure, *tythe of agistment* Horses for pleasure. shall not be paid, because by these no profit comes in; it shall be paid however for *working-horses* for the cart or plough, where they labour about such things as are profitable to the owner, and of no profit to the parson. 1 Roll. Abr. 646. Gibl. Cod. 682.

Horses kept for sale, and are sold; or if they be the *horses of travellers*, or others taken in as *guest-horses*, it is agreed that *tythe of agistment* is due, because a profit arises from them. Horses for sales Gibl. Cod. 682. 1 Roll. Abr. 647. Poph. 142.

Saddle-horses shall pay no tythes no more than *cattle* for the plough and pail, or *cattle killed* for the use of a man's own family, in respect of the profit that otherwise accrues to the parson from these. † Saddle horses. Bumb. 3.

HOUSES.

Of *common right* no tythe ought to be paid of *houses of habitation*, because they do not grow and renew by the year; but though no tythe is payable *de jure*, yet, if time out of mind a *modus decimandi* hath been paid for houses, it may be recovered in the *ecclesiastical court* in the nature of tythe; and the law will suppose that it was originally in lieu of the tythes of the land upon which the houses are built. Gibl. Cod. 682. 11 Rep. 16. a.

LAMBS.

Lambs are deemed a mixed *small tythe*, and so determined in many cases in the *Exchequer*. Gibl. Cod. 682. Palm. 219.

Where the number is under *ten*, it is the same with the manner of tything calves in the like case, which see under that head; where a parson insists upon it that he will wait till the next year, that they may come up to the tytheable number; or if the lambs belonging to the several owners are put together, to be tythed jointly, in House-lambs are tythed. Ibid.

† From the decision of the case *Bateman v. Aistroppe* and others, 1774, the law appears to be otherwise.—*Flowd. Law of Tythes*, 126.—E.

both

both cases *prohibition* will lie: in the first case, because it is against the nature of tythe by the *common law*, which is annual; and in the second, because it is a *custom* against reason; for by that means it may fall out that some one may have but *one lamb*, and that be taken for a tythe; and he that had more should pay nothing at all.

Ld Raym. 677. In the case of *Selby v. Clerk*, held by *Holt*, chief justice, that the *tenth lamb* is due to the parson by *common right*; and though they make distribution in the *ecclesiastical courts*, that is only among the parsons themselves, with relation to places of their feeding throughout the year, but does not concern the proprietor of the land, who ought to pay the *tenth lamb* to the parson by *common law*. But this, when paid, could be no foundation of a claim by way of *modus*, to be discharged of all tythes of the lambs there fed, on which the pretence for a *modus* was founded.

LEAD

2 Inst. 651. Is one of the things which my *Lord Coke* exempts
Gibb. Cod. 682. from tythe, as of the substance of the earth, and not annual; and therefore where tythe is claimed, it must be upon the foot of *custom*

LIME.

1 Roll. Abr. 642. This is exempted from tythe on the same ground as
2 Kcb. 596. lead, being considered as part of the freehold.

LOPPINGS OF TREES.

Gibb. Cod. 682. It is agreed by all, that *timber-trees* of the age of *twenty years*, or *above*, shall not pay *tythe of loppings*; (no, not if they be cut every *ten* or *twelve years*;) but it hath been made a question, whether such branches, if the trees are lopped *before twenty years*, shall not always pay for *loppings after twenty years*, inasmuch as at the *first lopping* the tree was not privileged.

MADDER.

[This, by various acts, was put under composition at five shilling per acre, the last act expired in 1786. Mr. Plowden in his *Principles and Law of Tything* presumes that it pays now as a *small tythe*; but that probably the statute composition

composition is kept up by agreement. See *Plowd. Law of Tythes*, 126.]

MAPLE.

Tythe of *maple* shall be paid, although it be of *twenty* Gibf. Cod. 683, years growth and more.

MAST.

Sir Simon Degge observes, that *tythes of crabs, mast*, Gibf. Cod. 683, &c. is to be paid when the same are gathered, or satisfaction is to be given if eaten with swine on the ground. See *Acorns*.

MILK.

On *tythe-milk*, three things are inquirable: First; To whom? And that is, to the parson in whose parish the cows yielding milk are depastured for the time; Second; In what manner? and that shall be, not by the *tenth part* of every meal, but by every *tenth meal* entire; Third; At what place? and that was adjudged to be the *church-porch*, whither it shall be brought by the parishioner, Declared *per curiam*, that of *common right tythe-milk* is payable at the *parsonage* or *vicarage-house*, Manner of paying tythe of milk. Gibf. Cod. 683. Ld Raym. 129.

The same rules that take place as to the *milk of cows*, do, by parity of reason, and according to the laws of the church, hold in the *milk of goats and ewes*, where it is preserved. Gibf. Cod. 683.

In the case of *Dodson v. Oliver*, decreed, that if there be any *custom* in a parish for the manner of *tything-milk*, as to carry it to the *church-porch*, or *parsonage-house*, that must be observed by the parishioner; but if there be no particular custom or usage, the parishioner is obliged *de jure* to pay every *tenth meal*, to milk the cows at the usual place of milking into his own pails; and the parson is obliged to fetch it away from the milking-place in his own pails, in a reasonable time; and if he doth not fetch it before the next milking-time, the parishioner may justify pouring the milk upon the ground, because he hath occasion for his own pails. Determined by the whole court of *Exchequer* in this case, that the milk ought not to be carried either to the *church-porch*, or to the *parson's house*, and that it ought to be fetched by the parson. Bunb. 73.

Mills

MILLS.

Gibf. Cod 683.
Show. 281.
Curth. 215.
2 Inst. 671.

Mills are of two sorts, either *corn-mills*, or *mills for other uses*, as *paper-mills*, *fulling-mills*, and the like. *Corn-mills* have been commonly thought to yield a *predial tythe*, viz. the *tenth toll-dish*, from its belonging to the incumbent where the mill stands, and not where the miller dwells; according to the known distinction, that *predial tythes* are payable wherein they arise; *personal* where the person hears divine service, and receives the sacrament: as was argued by my Lord Chief Justice Holt, 3 *W. & M.* in the case of *Gumley v. Falkingham*, contrary to the suggestion of Coke in his *commentary upon articuli cleri*, cap. 5. where he speaks of some who would have the *tythe of corn-mills* to be *personal*, as well as the *tythe of other mills*; and it hath been so adjudged in the House of Lords to be a *personal tythe*, contrary to the determination of *Lyndwood*.

8 P. Will 463.

It was determined by the House of Lords, that *mills are tytheable*, but that the same is a *personal tythe*, and so ought to be paid out of the *clear gain*, after all manner of charges and expences are deducted, as the Exchequer formerly decreed in *Newte v. Chamberlayne*, 20th Feb. 1705.

WIND-MILLS.

Degge, p. 2. c. 9.

The *canonists* hold, that this is a *predial tythe*, and that the *tenth toll-dish* ought to be paid for the same, without deduction of expences: but this doth not agree with the *common law*, and therefore is not binding.

Fulling-mills,
tin-mills, lead-
mills, and plate-
mills.

Gibf. Cod. 166.

By statute 9 *Edw. 2. stat. 1. c. 5.* "If any do erect in his ground a mill of new, and afterwards the parson of the same place demandeth the *tythe* for the same, the King's prohibition shall not lie."

It hath been resolved, that *fulling-mills*, *tin-mills*, *lead-mills*, *plate-mills*, and the like, are not within this statute, nor is *tythe* due of such otherwise than by *custom*.

Bunb. 133.

"Mills, where their first erection is not known, the rule of their discharge seems to be, that all such mills whose first erection was before time or memory, and is not otherwise known by matter of record, and have not been subject to the payment of *tythes*, shall be intended to be erected before the statute, and so to be *tythe-free*."

"But

“ But as to mills for which tythes have been paid, and new mills, tythes must be paid for them.”

Where there is a *modus* in lieu of all tythes issuing out of a messuage, and an *ancient* water-mill for corn, and a new water-mill for corn is erected within the said messuage, if the stream on which the *ancient* mill stood is diverted by the owner (*and not by the act of God*), and a new mill erected upon the new stream, they shall not be discharged by virtue of any former *modus*. Roll. Abr. 641

Where there hath been an *ancient* corn-mill, for which a *modus* hath been paid for time *immemorial*, and afterwards, by continuance of time, the mill-stream changes its course, and goes in a place a little distant from the *ancient* stream, and thereupon the owner of the mill pulls it down, and rebuilds it in the new place where the stream now runs, this shall be discharged of tythes by force of the *ancient modus*; for this comes by the act of God, and not by the act of the party. Ibid.

[In *Gaches v. Haynes*, 1784, 3 Gwill. 1256, it was laid down by Lord Chief Baron Eyre, that though the tythe of a mill were to be recovered and paid for as a *personal tythe*, yet it was, not strictly to be taken as a *personal tythe* in all respects, for it was *predial* as to its locality. And since the above decision, in the case of *Hall v. Macket and others*, 1784, 3 Inst. 917. Lord Chief Baron Macdonald observed, “ the principle upon which the tythe of mills depends, seems now clearly fixed in *Newte v. Chamberlayne*, and *Gaches v. Haynes*, and the other cases: it is now settled, that it is to be considered as a *predial tythe* so far as regards its locality, and the person to whom it is payable, but the mode of payment is to be treated as a *personal tythe*.”]

NURSERIES.

On these two questions arise; First; Whether they shall pay tythe? And though it was urged that they are of the nature of the land, and so are privileged, yet the whole court was of opinion, that inasmuch as the owner dug them up, and made profit of them, and sold them in another parish, tythe should be paid of them. Secondly; By whom the tythe shall be paid? Which question was resolved by the court in the case of *Grant v. Kidding and Ball*, viz. if the owner sells them, and pulls them up

Gibb. Cod. 683,
684. 3 Cro. 2.
526. Jones W.
416. Hard. 380.

The Law of Tythes.

himself, he shall pay the tythes ; but if he sell them particularly to another, the vendee shall pay the tythes.

OAK.

This, together with *ash* and *elm*, are privileged from paying tythe by the *statute of sylvæ cædia*, as timber, being of or above the growth of *twenty years*, it hath been resolved, that *oak* under *twenty years*, being fit for timber in time to come, shall not pay tythe ; and that though it stands till it is rotten, and unfit not only for timber, but for all manner of uses except the fire, it shall be privileged, because it hath been once privileged.

EASTER OFFERINGS.

Bunb. 173. 174. Decreed, that *Easter offerings* were due of *common right* at *two-pence per head*, unless it be customary to pay more.

ORCHARDS.

If the soil of an orchard be sown with any kind of grain, the parson shall have tythe of the *fruit-trees*, and of the grain, for they be of several and distinct kinds.

OSIERS.

These being employed in hurdles for sheep, no tythe shall be paid of them.

PARKS.

Gibf. Cod. 684. All the *books* are clear, that if the *modus* was a certain consideration in money for all the tythes of such a park, such *modus* shall hold, notwithstanding it be disparked. —
Mod. 900.
3 Cro. 457.
2 Bull. 240. But if the *modus* was for the *deer* and *herbage* of such a park, the *modus* is gone upon such park being disparked.

Gibf. Cod 684. The same doctrine holds, if the *modus* had been to pay
Noy, 34. Mod. a *buck* and a *doe* for all tythes of such a park, and the park
209. is disparked, the *modus* shall continue, and the owner may give a *buck* and a *doe* out of another park ; but if he was to pay the *shoulder of every deer*, or expressly a *buck* or a *doe* out of the same park, the *modus* is gone.

PARTRIDGES.

Gibf. Cod. 684. No tythe shall be paid of the *eggs* or *young of partridges*
1 Roll. Abr. and *pheasants*, because they are *feræ naturæ* ; and though
436. they

they are made tame, or be kept in a place inclosed, (their wings being clipped) and there lay eggs, and hatch young ones, yet this is held not to alter the case.

PEAS

Are tytheable as beans, but it has been held, that if one gather *green peas* to be eaten in his house, no tythe shall be paid of them; but if gathered for sale, or to feed hogs, they become subject to tythe. 1 Roll. Ab. 647.

PHEASANTS,

Pay no tythes.

Gibf. Cod. 684.

PIGEONS.

No tythe due for *pigeons* spent in the house, but are subject to tythe, if sold. Gibf. Cod. 684.
2 Roll. Rep. 2.

The same doctrine holds as to pigeons which are in holes about a house, and increase there.

RAKINGS.

Where rakings are of great value, or if left upon the land collusively, tythes shall be paid of them; but if left in small quantity, and involuntary, it is otherwise. Gibf. Cod. 684.

RAPE-SEED.

This is deemed a *small tythe*, and it is usual for the occupier of the land to agree with the owner of the tythe for the tythe of rape-seed at so much an acre. Burn. E. L. 406.

ROOTS.

Held, that if a man cut *coppice-wood*, and pay tythe of it, and before any new branches sprung out, grub up the roots and stubs of the wood, he should not pay tythe of them, because they are *parcel of the frank tenement*, and do not renew annually. Gibf. Cod. 684.

SAFFRON

Is a *predial small tythe*; but there does not appear any case upon the mode of taking it in kind.

SALT

Not tytheable, but by *custom* only.

Gibf. Cod. 684.

TARES.

TARES.

Bunb. 279.

Held, that *tares*, whether green or ripe, are a great *tythe*, and belonged to the *rector*; if given to cattle of husbandry, not subject to *tythe*, as the court seemed to think.

PRESCRIPTION.

Watf. 49.

Bunb. 279.

A *prescription* may be within a parish that, by reason they have not sufficient meadow for *milch-kine* and *draught cattle*, they have used to cut some of their *tares green*, and give them to the aforesaid stock, and to be discharged of *tythes* for the same; and this is a *good custom*, on consideration for that the parson hath an advantage thereby as well as the parishioner, namely, in the *tythe-milk*, and manuring of the *other corn land*; and the matter is, the want of meadow and pasture; and the surmise is, that if it had been said, that for want of meadow and pasture they have used to eat their meadows with their plough-cattle, and for so much as they did eat to pay no *tythes*.

Watf. 49.

The same if a man, according to the custom of the country, doth sow his land to feed his *horses for tillage*, and the use hath been to suffer the horses to be fed upon the land, without any mowing of the grain, the parson shall not have any *tythes* thereof, because it is no more than *pasture for his horses*.

TILE.

2 Inst. 65.

Not *tytheable*, being of the substance of the earth, and not annual.

TREES.

Lynd. 200.

By a constitution of *Archbishop Winchelsea*, *tythes* shall be paid of trees if they be sold; which *Lyndwood* explains of *large trees* which do bear fruit, and being cut down, are not fit for timber, but are used for fuel.

By statute 45 *Edw. 3. c. 3.* it is enacted as followeth:
 “As the complaint of the great men and the commons,
 “shewing by their petition, that whereas they sell their
 “great wood of the age of *twenty years*, or of greater age,
 “to merchants, for their own profit, or in aid of the
 “King in his wars, parsons and vicars of *holy church* do
 “implead and draw the said merchants in the *spiritual*
 “court

"court for the tythes of the said wood, in the name of
"this word called *sylva cædua*, whereby they cannot sell
"their woods to the very value, to the great damage of
"them and of the realm; it is ordained and established,
"that a *prohibition* in this case shall be granted, and upon
"the same an attachment, as it hath been used before his
"time."

"The wood intended in this statute is such as is fit for ^{2 Inst. 643.}
"building of houses and ships, and therefore without
"doubt it comprehends oak, elm, and ash; but it hath also
"been adjudged to include *beech*, as timber in Bucking-
"hamshire, and some other counties, where better timber
"is not to be had, or is very scarce. And those trees are
"free, not only as to the trunk or timber, but also as to
"the bark, root, and germins that grew upon the ancient
"stock; and it is not material how often or how seldom
"the branches thereof are lopped, because being once
"free, they are always free."

TIMBER TREES.

Timber-trees above twenty years growth, cut and corded Bunb. 98.
for fuel, and the bark stripped from the same, *adjudged* to
pay tythes as well as underwood; and that no tythe was
due for such wood above *twenty years growth*, nor of the
bark thereof, which was not corded.

TURF.

Tythe-free, as part of the freehold.

^{2 Inst. 651.}

TURKIES.

In the case of *Carlton v. Brightwell*, it was holden by ^{2 P. Wms. 642.}
the Master of the Rolls, that *turkies* are birds as tame as
hens or other poultry, and therefore must pay tythes.
And also that if tythes be *once* paid of *eggs*, there can be
no demand made a second time in respect of the *chicken*
hatched afterwards.

TURNIPS.

Held, that where land is sown with *turnips* after the Bunb. 314.
corn is cleared, and fed with sheep and barren cattle, that
tythe shall be paid of such *turnips*; though it was insisted.

E

upon,

upon, that the soil in that county (Staffordshire) was *dry* and *sandy*, and that this method of husbandry improved the land, so that the parson had *uberiores decimas* of *corn*, and had received the tythe of *lambs* and *wool* of the *sheep* so fed before; but the court over-ruled this defence, and said it amounted to a *non decimando* as to tythes.

3 Gwill. 859.
1756, M.S.
Do. 945. 1768.

[This tythe is payable by the owner of the land, not of the beasts, and must be set out in heaps, where the quantify will admit it.]

WASTES.

By statute 2 *Edw.* 6. c. 13. *sect.* 3. the tythe of cattle feeding on large wastes, where the parish is uncertain, shall pay tythe to the incumbent of that parish in which the owner of the cattle dwells, unless limited otherwise by custom or prescription.

WILLOWS

Gibf. Cod. 685. Are not tytheable if growing about a house, though it is waste to fell them; yet being felled, tythe shall be paid of them.

WOAD

3 Cro. 28. Growing in the nature of an *herb*, the tythe thereof is a small tythe.

2 Gwill. 475. [It must be set out in baskets, both at first and second cutting.]

WOOD.

Gibf. Cod. 686. According to the common opinion, *wood* passes for a great tythe; that in controversies between *parson* and *vicar*, where the endowment is lost, this point is determined by prescription; and in case the endowment remains, and doth not expressly mention *wood*, and yet that tythe hath been usually taken by the *vicar*, the law will, by favourable construction, either graft it upon some general expression in the endowment, or else presume that there might be a subsequent augmentation of the endowment of the *vicar*, by which he became entitled to *tythe-wood*.

That

That wood is a *predial* tythe, is plain, but whether Whether a great great or small, hath been a question between the parsons or small tythe. and vicars; and it hath been resolved, that if a vicar be Degge, 2. c. 1: only endowed with the small tythes, and have, by reason thereof, always had tythe-wood, in such case it shall be accounted a small tythe, otherwise it is to be accounted amongst the great tythes. But this doth not alter the quality of the tythe; and the vicar's having received it, may be evidence of a grant thereof having been made subsequent to the endowment, although such original grant is now lost, but is not evidence that wood in itself is a small tythe.

First; with regard to the age; *timber-trees*, of or above How wood may be discharged from tythes. twenty years growth, are discharged by the statute of *sylvæ cædua*; Secondly; with regard to the use it is put to; wood for the owner's firing, hedging and fencing of the premises within the same parish, hath been adjudged *tythe-free*; but this is to be alledged, not absolutely, that 3 Cro. 113. Mod. 683. Litt. 52. Keb. 319. Palm. 37. *per legem terræ* wood so applied shall not pay tythe: but *sub modo*, that the person hath some consideration for it, or at least that the house is for maintenance of husbandry, by reason of which the parson hath *uberiores decimas*.

In divers places they sell out the *tenth acre of wood* Manner of tything wood. standing; and so it may be by the *pole* or *perch*, or by the *tenth faggot* or *billet*, according as the custom of the Hob. 350. place hath been.

[Tythe-wood set out, ought to be stacked and faggotted.*

WOOL.

There is no dispute concerning the tythe which wool yields, it being universally agreed to be a *predial small tythe*. Even hog-wool,† wool-locks, and flocks of wool, after the wool is made, are tytheable, if there be more than ordinary left out, otherwise not.

Notwithstanding the former doctrine of apportioning the tythe-wool according to the time the sheep may agist Bateman v. Aistruppe, 2 Raym. 670. A. D. 1732.

* So held in the case of *Brabourne v. Eyres*, — 1 Wood, 127. A. D. 1672. This, however, seems to be questioned by the case of *Broe v. Drowe*, 1729. 2 Gwill. 700. from

M. S. Perhaps there is no one branch of tythe on which the books seem more at variance, than on the tythe of wood. — E.

† The wool of a sheep one year old.

in several parishes, the law is now settled, that the whole of the tythe of wool shall be paid to the rector or vicar of the parish in which the sheep are shorn, and it is payable *when the sheep are shorn*.

Wilson v. Bp.
of Carlisle.

Hob. 107.

It appears that wool ought to be set out in bales and heaps in *fight*, and *within touch* of the other *nine* parts, of which the parson may judge of the fairness of his tythe by his own senses, from *weight*, *quality*, and *measure*.]

CHAP. V.

The Manner of setting out, and taking and carrying away Tythes, as settled by the Common Statute and Ecclesiastical Law.

How tythes are
to be set out.

Gibf. Cod. 688.
Noy, 134.
1 Roll. Abr. 643.
2 Vent.

A PERSON is bound, of *common right*, to cut down, and set out the tythes of his land: for example, a parson made a collector of tythes, and that collector licensed a parishioner to carry away his corn without setting forth of tythes, and determined a *void* license. The law of the church entitles the parson to have notice given him; the *common law* considers such notice as not necessary. The furthest they have gone is to declare a custom of tything, without view, an absurd custom; and statute 2 Edw. 6. cap. 13. sect. 2. entitles a parson, though not to notice, to a right of seeing it set out.

When they are
to be set out.

Gibf. Cod. 688.
689. 2 Leon. 70.
2 Keb. 36.
Siderf. 280.

The time and manner of setting out tythes (*i. e. whether it is to be done when the things are in sheaves, or cocks, or shocks*) depends on the particular custom of the place. The *common law* declares, that of *common right* the owner is obliged to do no more, in order to the tything of corn, than to bind it up in sheaves. It being a maxim, that every *modus* must be something for the advantage of the parson, which the owner is not bound to do, the setting into cocks or shocks hath been offered as the foundation of a *modus*, when no other pretence could be found; and particularly adjudged a good consideration for not tything the odd sheaves under the number of *ten*. There are no *ancient* testimonies to make the tything in sheaves the *common law* of tything. Lyndwood (who usually distinguishes between what is due *de jure communi* and what *de consuetudine*) sets all the method of tything upon the same foot of custom.

The

The tenth land of corn, (*instead of the tenth sheaf or flock*) beginning with that land which is nighest to the church, hath been adjudged a good custom; notwithstanding it was alleged, that the occupiers, knowing which would fall to the share of the parson, did not till, manure, or sow it as they did the rest; for this fraud (they said) might be remedied by an action at *common law*. Might not the custom as well be declared a custom against reason, when the presumption is so strong, that in case the occupier will not bestow equal care upon it as upon his own, and when it is so difficult to state the degrees of care taken or required; and since, if due care be not taken, no remedy is left but what is worse than the disease?

It is reported to have been determined in the Common Pleas, that by the *civil law* the parson ought to have his tythe by the *tenth ridge*. The maxims of *civil* and *canon law* are not usually over-valued in our temporal courts; but the use which was made of this was, that the reaping, binding, and shocking, being (in consequence of that doctrine) more than the owner was bound to do, these should become a good *modus* to discharge him of tythe for the hay growing in the head-lands.

Tythes being set out, or severed from the *nine parts*, become *lay chattels*. So held on this foundation, when the tythe of corn was set out in sheaves, and the parson would not take it, but prayed remedy in the *spiritual court*, a prohibition was granted; and when a sequestration was prayed in the *temporal court* of tythes not set out, the right of which was in controversy, the party was told his request had been reasonable, if they had been severed from the *nine parts*. On the same principle, if after severance they are carried away by a stranger, the remedy is in the temporal courts; and though it is otherwise, if carried away by the owner, because his setting them out in order to carry them away, is deemed a fraudulent setting out.

After severance it rests upon the parson, and not upon the owner of the land. It was determined in the case of Dr. Bridgman, that though the parishioner ought *de jure* to reap the corn, he is not bound to guard the tythes of the parson; on the contrary, if the parson does not carry them away in convenient time, an action on the case lies against him. But so, that the parishioner may neither

bring such action, nor put in his cattle till he hath given notice to the parson that they are set out. If tythes be spoiled, and the parson seeks remedy in the spiritual court, and a prohibition is obtained upon *faſſe* ſuggeſtions, a conſultation is provided in the Register.

Comyns, 22.

On a caſe where the occupier, after ſeverance, took the *nine parts*, and turned his cattle into the meadows where the tythes were, which deſtroyed and conſumed the tythes. Holt, Chief Juſtice, ſaid, that though there was no obligation to give notice of the ſeverance, yet he thought the turning of cattle to the tythe made it a *fraudulent* ſeverance, and that a ſuit might be maintained for it in the ſpiritual court.

When tythe ſet out, parſon may ſpread and dry them.

Degge, p. 2. c. 14. Str. 245.

When the tythes are ſet forth, the parſon may of *common right* come himſelf, or his ſervants, and ſpread abroad, dry and ſtack his corn, hay, or the like, in any convenient place or places upon the ground where the ſame grew, till it be ſufficiently weathered, and fit to be carried into the barn. He muſt not take a longer time for the doing thereof than what is convenient and neceſſary; what ſhall be deemed a *convenient* and *neceſſary* time, the law neither doth nor can define; as this muſt be determined by the quantity of the corn or hay, and the weather; what ſhall, therefore, in this, and all other caſes of the like nature, be ſaid to be a *reaſonable* and *convenient* time, is to be determined by the jury, if the point come in iſſue before a jury: if on a demurrer, or other matter of law, the court where the ſame is tried are to determine it.

Stat. 2 & 3 Edw. 6. cap. 13. ſect. 2.

By ſtatute 2 and 3 *Edw. 6. cap. 13. ſect. 2.* "If any perſon carry away his corn or hay, or his other *predial* tythes, before the tythe thereof be ſet forth; or willingly withdraw his tythes of the ſame, or of ſuch other things whereof *predial* tythes ought to be paid; and if any perſon do ſtop, or let the parſon, vicar, pro-prietor, owner, or other their deputies or farmers, to view, take, and carry away their tythes, as is above ſaid, he ſhall forfeit double value, with coſts, to be recovered in the eccleſiaſtical court."

As to a convenient time for the parſon to carry away his tythes.

The parſon has a right to carry away his tythes; if he be obſtructed, he ſhall have a remedy in the ſpiritual court. By the 8th *Jac. 1*, a conſultation was granted on this

this point, and adjudged a fraudulent setting out; which Gibf. Cod. 68g. 1 Cro. 844. though possibly a good reason, seems not to be a true one, but to be used on purpose to save the *maxim*, of tythes being a *lay-chattel* after setting out; since (without the help of that distinction) stat. 2 Ed. 6. c. 13. sect. 2. doth in exprefs words give remedy before the spiritual judge, in case the parson is stopped in carrying away his tythes; on which it was resolved, (48 Eliz. in Blackwall's case) that the question being in the spiritual court, whether the gate was locked or open, no prohibition should be granted.

The parson may carry his tythes from the ground where they grew, either by the common way, or any such way as the owner of the land used to carry away his *nine parts*. Where there are more ways than one, and the question is, which is the right way, this is cognizable in the temporal court.

If the owner of the soil, after he hath duly set forth his tythes, will stop up the ways, and not suffer the parson to carry away his tythes, or to spread, dry, and stack them on the land, this is no good setting forth of his tythes without fraud; within the statute: and the parson may have an action on the said statute, and may recover the *treble value*; or may have an action on the case for such disturbance; or he may, if he will, break open the gate or fence which hinders him, and carry away his tythes. Degge, p. 2. f. 14. Str. 245.

If this step becomes necessary, he must be cautious that he commit no riot, nor break any gate, rails, lock, or hedges, more than necessarily he must for his passage. Deg. p. 2. c. 24.

When he comes with his carts, teams, or other carriages, to carry away his tythes, he must not suffer his horses or oxen to eat and depasture the grass growing in the grounds where the tythes arise, much less the corn there growing or cut: but if his cattle (as cannot be avoided) do in their passage, against the will of their driver, inatch some of the grass, this is excuseable. Deg. p. 2. c. 14.

If tythes after set out remain too long on the land, the owner of the soil may take them *damage feasant*: if he be sued for them, in order to justify, he must set forth how long they had remained before he took them; and when they shall be said to remain too long, is triable by the jury. The remedy where tythes remain too long after set out. Watf. c. 54.

Degge. p. 2. c.
14. Ld. Raym.
p. 187.

An action on the case will lie against the parson for his negligence in this behalf; but no action in such case will lie, unless the parishioner has duly set forth his tythes, and hath also given notice to the parson that they are so set forth.

CHAP. VI.

The several Remedies to be taken for the Recovery of Tythes by the Common Statute and Ecclesiastical Law.

Where tythes
were recover-
able in old
times
2 Inst. 661.

When recover-
able in the eccle-
siastical courts.
Lind. 191.

IN old times tythes were recoverable in the *county-court*, where the bishop or his deputy, and the sheriff, did sit as co-ordinate judges, there being at that time no separate court of ordinary ecclesiastical jurisdiction.

By a constitution of Archbishop Winchelsea. "Forasmuch as many are found, who are not willing freely to pay their tythes, we do ordain that the parishioners be admonished *once, twice, and thrice*, to pay their tythes to God and the church; and if they do not amend, they shall first be suspended from the entrance of the church, and so at last be compelled to pay their tythes by censures ecclesiastical, if it shall be necessary: and if they shall desire a relaxation or absolution of the said suspension, they shall be remitted to the ordinary of the place, to be absolved and punished in due manner."

13 Ed. 1. sect. 4.

By the statute of *circumspecte agatis*, 13 Edw. 1. stat. 4. The King to his judges sendeth greeting; "Act *circumspectely* in all matters concerning the clergy, not punishing them if they hold plea in court christian, in the case where a parson doth demand of his parishioners oblation of tythes due and *accustomed*; in which case the spiritual judge shall have power to take knowledge, notwithstanding the King's prohibition."

Gibb. Cod. 691.
cites Hob. 247.
Noy. 81. Helt.
133. 1 Vent. 32.

Accustomed] By this act, *modus decimandi* and *real composition* are established; for hereby are tythes divided into two parts; in *decimas debitas*, or *quota pars*, the tenth part, and into *decimas consuetas*, which are due by *custom and usage* in satisfaction for tythes; for which satisfaction, or *modus decimandi*, the parson may sue in court christian, and is warranted by this act: for the rule is, that the *modus*

modus is to be sued for in the *ecclesiastical* court, as well as the very tythe; and if it be allowed between the parties, they shall proceed there; but if the custom be denied, it must be tried at the *common law*; and if it be found for custom, then a consultation must go; otherwise the prohibition stands. The like is affirmed in case a jury, upon an issue joined in a prohibition on a *modus decimandi*, find a different *modus*: since a *modus* is found, they shall not have consultation.

The ground why the court of *common law* prohibits Gibf. Cod. 691. the *spiritual court* from trying of *moduses* are, that whereas every *modus* is *less than the real value*, the rule of the common law is, that *less than the real value shall not be taken*, and that a custom to the contrary is void; and that the *ecclesiastical* and *temporal* laws differ in the *times of limitations*; forty years making a good custom with the first; whereas, by the second, it must be beyond the time of memory.

It has been held, that though the general rule of the common law is not to admit *less than the real value*, yet there are several exceptions, as in cases of *personal* and *small* tythe; in which customary payments are allowed, without breach of conscience; the *spiritual courts* have commonly allowed pleas of *modus decimandi*, and are ready to allow them; that the *averment* in the prohibition is not that they do take cognizance, but that the plea hath been offered and refused; which supposes, that if the plea be admitted, the prohibition ought not to go; that accordingly it hath been affirmed by Doderidge and others, that they may as well try the *modus* as the right of tythes, and that prohibition is not to be granted till the *spiritual court* either refuse to admit the plea, or proceed to try it by methods different from the rule of the *temporal law*, as to the time of limitation, or number of witnesses, or the like. Lord Coke contended for the contrary doctrine; it was declared by Keling and Twisden, 20 Car. 2. in the case of the Bishop of Lincoln against Smith, that in case of one libel for a *modus decimandi*, if the *spiritual court* allow the plea, they may try it; and Coke's opinion against trying *pensions* claimed by *prescription* in the *spiritual court*, they said, was not warranted by the books.

By

Stat. 9 Edw. 2. By statute of *Articuli Cleri*, 9 Edw. 2. stat. 1. cap. 1.
 “Whereas laymen do purchase prohibitions generally
 “upon tythes, obventions, oblations, mortuaries; the
 “King doth answer to this article, that in tythes, obla-
 “tions, obventions, mortuaries, when they are propound-
 “ed under these names) the King’s prohibition shall hold
 “no place, although for the long withholding of the same
 “the money may be esteemed a sum certain. But if a
 “clerk, or a religious man, do sell his tythes, being ga-
 “thered in his barn, or otherwise, to any man for money,
 “if the money be demanded before a spiritual judge, the
 “King’s prohibition shall lie; for by the sale the spiri-
 “tual goods are made temporal, and the tythes turned
 “into chattels.”

Stat. 18 Edw. 3. By statute 13 Edw. 4. stat. 3. cap. 7. “Whereas writs
 “of *scire facias* have been granted to warn prelates, reli-
 “gious, and other clerks, to answer *disfines* in our chan-
 “cery, and to shew if they have any thing, or can any
 “thing say, wherefore such *disfines* ought not to be re-
 “stored to the said demandants, and to answer as well to
 “us as to the party, to such *disfines*; such writs from hence-
 “forth shall not be granted, and the process hanging on
 “such writs shall be annulled and repealed, and the parties
 “dismissed from the secular judges of such manner of
 “pleas.”

Terms of Law.
 Article *Scire* and
Fieri Facias.

Writs of scire facias.] This is a writ where one hath
 recovered debts or damages in the King’s courts, and sues
 not for execution within a year and a day; after which he
 shall have this writ to warn the party; who, coming not,
 or saying nothing to stay execution, a writ of *feri facias*
 goes, commanding the sheriff to levy the debts or damage
 of his goods.

Inft. 640.

To warn prelates, religious, and other clerks.] This *scire facias*
 was not brought against the possessors of the land
 for subtraction of tythes, but against the prelates or other
 clerks, which took the tythes after they were severed.—
 Commissions out of the Chancery were directed to cer-
 tain persons, giving them authority to enquire whether
 such a spiritual person ought to have tythes of such lands;
 whereupon inquisitions were taken and returned: and if
 it were found for the spiritual person, upon this record,
 he might have a *scire facias* against any prelate, religious,
 or other clerk, that took them after severance.

By

By stat. 1 *Rich. 2. c. 13.* "The prelates and clergy of this realm do greatly complain them, for that the people of holy church, pursuing in the spiritual court for their tythes and their other things, which of right ought, and of old times were wont to pertain to the same spiritual court; and that the judges of the holy church having cognizance in such causes, and other persons thereof meddling according to the law, be maliciously and unduly for this cause indicted, imprisoned, and by the secular power horribly oppressed, and also enforced with violence, by oaths and grievous obligations; and many other means unduly compelled to desist and cease utterly of the things aforesaid, against the liberties and franchises of holy church: wherefore it is assented, that all such obligations made or to be made by *duress* or violence, shall be of no value. And as to those that by malice do procure such indictments, and to be the same indictors, after the same indictees be so acquitted, such procurers shall suffer a year's imprisonment, and restore to the parties their damages, and shall nevertheless make a grievous fine unto the king. And the justices of assize, or other justices, before whom such indictees shall be acquit, shall have power to enquire of such procurers and indictees, and duly to punish them according to their desert."

By statute 1 *Rich. 2. c. 14.* "At what time that any person of the holy church be drawn in plea in the *secular court* for his own tythes, taken by the name of goods taken away; and he which is so drawn in plea makes an exception, or alleges that the substance and suit of the business is only upon tythes due of right, and of possession to his church or other his benefice: In such case, the general averment shall not be taken, without shewing specially how the same was his *lay chattel*."

By the 27 *Hen. 8. c. 20.* "All subjects of this realm, according to the *ecclesiastical* laws and ordinances of the church of England, and after the laudable uses and customs of the parish or other place where he dwells or occupies, shall yield and pay his tythes and offerings, and other duties of holy church; and that for such subtractions of any the said tythes and offerings, or other duties, the parson, vicar, curate, or other party in that behalf

The Law of Tythes.

"half grieved, may, by due process of the King's eccle-
 "siastical laws of the church of England, convene the
 "person offending before his ordinary, or other competent
 "judge of this realm, having authority to hear and deter-
 "mine the right of tythes, as also to compel the same
 "person offending to do and yield his duty in that behalf:
 "and in case the ordinary of the diocese, or his commis-
 "sary, or the archdeacon, or his official, or any other
 "competent judge aforesaid, for any contempt, contumacy,
 "disobedience, or other misdemeanor of the party defen-
 "dant, shall make information and request to any of the
 "King's most honourable council, or to the justices of
 "the peace of the shire where such offender dwells, to as-
 "sist and aid the same ordinary, commissary, archdeacon,
 "official or judge, to order or reform any such person in
 "any cause before rehearsed; that then he of the King's
 "said honourable council, or such two justices of the
 "peace (*whereof one to be of the quorum*), to whom such
 "information or request shall be made, shall have power
 "to attach, or cause to be attached, the person against
 "whom such information or request shall be made, and
 "to commit him to *ward*, there to remain without *bail*
 "or *mainprize*, until he shall have found sufficient surety
 "to be bound by recognizance, or otherwise before the
 "King's said counsellor, or justice of the peace, or any
 "other like counsellor, or justice of the peace, to the
 "use of our said Lord the King to give due obedience to
 "the process, proceedings, decrees, and sentences of the
 "ecclesiastical court of this realm, wherein such suit or
 "matter for the premises shall depend, or be, and that
 "every of the King's said counsellors, or two justices of
 "the peace, whereof the one to be of the *quorum*, as is
 "aforesaid, shall have power to take and record such re-
 "cognizance and obligations."

"PROVIDED, That this shall not extend to any inha-
 "bitant of the city of *London*, concerning any tythe,
 "offering, or other ecclesiastical duty; grown and due
 "to be paid within the said city; because there is another
 "order made for the payment of tythes and other duties
 "within the said city."

"PROVIDED ALSO, That all persons, being parties
 "to any such suit, may have their lawful action, demand,
 "or prosecution, appeals, prohibitions, and all other their
 "lawful

“lawful defences and remedies in every suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample manner as they might have had if this act had not been made.” *f. 2.*

Shall have power to attach.] *Sanchee* and others, *quakers*, were cited into the ecclesiastical court, to answer there upon their solemn affirmation, &c. concerning tythes withheld by them from the parson of the parish, and for not answering, the commissary, according to statute 27 H. 8. cap. 20. certifies their contumacy to two justices of peace, by whose warrant they were seized, and committed to prison; and being brought by *habeas corpus* into the King's Bench, it was moved, that they might be discharged, because the new act concerning the affirmation of quakers gives the parson a remedy to recover tythes by distress, by virtue of a warrant of a justice of peace: then where a statute gives remedy, the jurisdiction of the spiritual court is taken away, unless it be saved by the same statute. 5 Co. 73. 6 Jones, 320. statutes were cited, where the jurisdiction of the spiritual court was saved, as 23 Eliz. cap. 1. 1 Eliz. cap. 2. In the same manner in statute against *usury*, 3 Inst. 152. 2 Inst. 657. and from thence it was inferred, that it was the opinion of those parliaments, that the *spiritual jurisdiction* would have been taken away by these acts, if it had not been saved by them. *Per curiam*, This last act seems to be only an accumulative remedy, and not to repeal the act of Hen. 8. In many cases the common law and ecclesiastical courts have a concurrent jurisdiction; as if a pension be payable out of a parsonage by *prescription*, the remedy for this is either in the *spiritual court*, or *annuity* lies for it at *common law*; though Coke says the contrary in 2 Inst. in his Comment on *statute de circumspécte agatis*. But where the nature of the offence is altered by a statute, and a new penalty inflicted, then, after the party has been tried at common law, and condemned, the ecclesiastical court shall not proceed against him. As if a man be convicted at common law for having two wives, or hath been adjudged the reputed father of a bastard son, &c. *f. 1.*

Exception was taken to the return, because it is said, *Ld. Raym.* 323. that *Sanchee*, &c. were imprisoned for contempt in a suit *Hil. 9. Will. 3.* for detention of tythes or other ecclesiastical duties; and it ought to appear for which the suit was specially. For though

though the statute that gives this remedy is *in general words* yet, in the return, the cause of imprisonment ought to be certainly expressed, to the end that it may appear to the court that it was an *ecclesiastical duty*, for which they are imprisoned. And of this opinion was the whole court, and therefore the quakers were discharged out of custody.

32 H. 8. cap. 7.
sect. 1. and 2.

Every person to
pay tythes ac-
cording to cus-
tom of the pa-
rish.

By statute 32 H. 8. c. 7. sect. 1, 2. (which was also made upon occasion of the dissolution of monasteries, and which was chiefly intended to enable laymen, that, by the dissolution, has estates or interests in parsonages, or vicarage impropriate, or otherwise, in tythes, to sue for subtraction of tythes in the ecclesiastical courts,) "All persons of this realm, of what estate, degree, or condition soever they be, shall fully, truly, and effectually divide, set out, yield, or pay, all and singular tythes and offerings aforesaid, according to the lawful customs and usages of parishes and places, where such tythes or duties shall arise or become due; and if any person of his ungodly and perverse will, shall detain and withhold any of the said tythes or offerings, or any part thereof, then the person or persons, being ecclesiastical or lay, having cause to demand the said tythes or offerings, being thereby wronged or grieved, shall and may convene the person so offending, before the ordinary, his commissary, or the competent minister or lawful judge of the place where such wrong shall be done, according to the ecclesiastical laws; and in every such case or matter of suit, the same ordinary or other judge, having the parties or their lawful procurators before him, shall proceed to the examination, hearing, and determination of every such cause or matter, ordinarily or summarily, according to the course and the process of the said ecclesiastical laws; and thereupon give sentence accordingly."

"And if any of the parties shall appeal from the sentence, order, and definitive judgment of the said ordinary, or other competent judge as aforesaid, then the same judge shall, upon such appellation made, adjudge to the other party the reasonable costs of his suit therein before expounded; and shall compel the same party appellant to satisfy and pay the same costs so adjudged, by compulsory process and censures of the said laws ecclesiastical;

“ ecclesiastical; taking surety of the other party to whom
 “ such costs shall be adjudged and paid, to restore the
 “ same costs to the party appellant, if afterwards the
 “ principal cause of that suit of appeal shall be adjudged
 “ against the same party to whom the same costs shall
 “ be yielded: and so every ordinary or other competent
 “ judge *ecclesiastical* shall adjudge costs to the other party,
 “ upon every appeal to be made in a suit or cause of sub-
 “ straction or detention of any tythes or offerings, or in
 “ any other suit to be made concerning the duty of such
 “ tythes or offerings.” *f. 3.*

“ And if any person, after such sentence definitive
 “ given against him, shall obstinately and wilfully refuse
 “ to pay his tythes or duties, or such sums of money so
 “ adjudged, wherein he shall be condemned for the same;
 “ it shall be lawful for two justices of the peace for the
 “ same shire, whereof one to be of the *quorum*, upon
 “ information, certificate or complaint to them made in
 “ writing by the said *ecclesiastical* judge that gave the same
 “ sentence, to cause the same party so refusing to be at-
 “ tached and committed to the next gaol, and there to
 “ remain without *bail* or *mainprize*, till he shall have
 “ found sufficient sureties, to be bound by recognizance
 “ or otherwise, before the same justices, to the use of our
 “ Lord the King, to perform the said definitive sentence
 “ and judgment.” *f. 4.*

“ PROVIDED, That no person shall be sued, or other-
 “ wise compelled to pay any tythes, for any manors,
 “ lands, tenements, or other hereditaments, which by
 “ the laws or statutes of this realm are discharged, or not
 “ chargeable with the payment of any such tythes.”

f. 5.

“ PROVIDED ALSO, That this shall not in any wise
 “ bind the inhabitants of the city of London, and suburbs
 “ of the same, to pay their tythes and offerings within
 “ the same city and suburbs, otherwise than they ought
 “ to have done before.” *f. 6.*

“ And in all cases where any person shall have any
 “ estate of inheritance, freehold, term, right or interest
 “ in any parsonage, vicarage, portion, pension, tythes,
 “ oblations, or other *ecclesiastical* or *spiritual* profits,
 “ which shall be made *temporal*, or admitted to be in
 “ *temporal* hands, and lay uses and profits by the laws of
 “ the

“ the statutes of this realm, shall be disseised, deforced,
 “ wronged, or otherwise kept or put from their lawful
 “ inheritance, estate, seisin, possession, occupation, term,
 “ right or interest therein, by any other person claiming
 “ to have interest in, or title to the same; the person so
 “ disseised, deforced, or wrongfully kept or put out, his
 “ heirs, his wife, and such other to whom such injury
 “ and wrong shall be done, may have their remedy in
 “ the King’s temporal courts, or other temporal courts,
 “ as the case shall require, for the recovery or obtaining
 “ of the same, by writs original of *præcipe quod reddat*,
 “ assize, of *novel disseisin*, *mordancestor*, *quod ei deforceat*,
 “ writs of dower, or other writs original, as the case shall
 “ require, to be devised and granted in the King’s court
 “ of *Chancery*, in like manner and form as they might
 “ have had for lands, tenements, or other hereditaments,
 “ in such manner to be demanded; and writs of *covenants*,
 “ and other writs for fines to be levied, and all other as-
 “ surances to be had of the same, shall be granted in the
 “ said *Chancery*, according as hath been used for fines to
 “ be levied, and assurance to be had of lands, tenements,
 “ or other hereditaments.” *f. 7.*

“ PROVIDED, That this shall not give any remedy,
 “ cause of action or suit, in the courts *temporal*, against
 “ any person who shall refuse to set out his tythes, or
 “ shall withhold or refuse to pay his tythes or offerings;
 “ but that in all such cases, the party being *ecclesiastical*
 “ or *lay*, having cause to demand, or have the said tythes
 “ or offerings, and thereby wronged or grieved, shall have
 “ his remedy for the same in the *spiritual* courts, accord-
 “ ing to the ordinance in the first part of this act mentioned,
 “ and not otherwise.” *f. 8.*

2 and 3 Edw. 6.
 cap. 13,

By stat. 2 and 3 Edw. 6. c. 13. the aforesaid acts of
 27 H. 8. c. 20. and 32 H. 8. c. 7. shall stand in full
 force: and moreover, it is further enacted as followeth,
 “ All persons shall truly and justly, without fraud or
 “ guile, divide, set out, yield and pay all manner of the
 “ *predial* tythes, in their proper kind, as they rise and
 “ happen, in such manner and form as hath been of right
 “ yielded and paid within *forty years* next before the mak-
 “ ing of this act, or of right or custom, ought to have
 “ been paid; and no person shall take or carry away any
 “ such or like tythes, which have been yielded or paid,
 “ within

“ within the said *forty years*, or of right ought to have
 “ been paid, in the place or places tytheable of the same,
 “ before he hath justly divided or set forth the tythe there-
 “ of, the *tenth part* of the same, or otherwise agreed for
 “ the same tythes with parson, vicar, or owner, propri-
 “ etary, or farmer of the same tythes, under the pain of
 “ forfeiture of *treble value* of the tythes so taken or car-
 “ ried away.” *f. 1.*

“ At all times whensoever, and as often as any *predial*
 “ tythes shall be due at the tything of the same, it shall
 “ be lawful to every party, to whom any of the said
 “ tythes ought to be paid, or his deputy, or servant, to
 “ view and see their said tythes to be justly and truly set
 “ forth and severed from the *nine parts*; and the same
 “ quietly to take and carry away: and if any person
 “ carry away his corn or hay, or his other *predial* tythes;
 “ before the tythe thereof be set forth, or willingly with-
 “ draw his tythes of the same, or of such other things
 “ whereof *predial* tythes ought to be paid; or do stop or
 “ let the parson, vicar, proprietor, owner, or other their
 “ deputies or farmers, to view, take, and carry away
 “ their tythes, as is above said; by reason whereof the
 “ said tythe or tenth is lost, impaired, or hurt; then, upon
 “ due proof thereof being made before the *spiritual* judge,
 “ or any other judge to whom heretofore he might have
 “ made complaint, the party so carrying away, with-
 “ drawing, letting, or stopping, shall pay the *double value*
 “ of the tenth or tythe so taking, lost, withdrawn or
 “ carried away, over and besides the costs, charges and ex-
 “ pences of the suit, in the same: the same to be recovered
 “ before the *ecclesiastical* judge, according to the King’s
 “ *ecclesiastical laws*.” *f. 2.*

“ PROVIDED, That no person shall be sued, or other-
 “ wise compelled to yield, give, or pay, any manner of
 “ tythes, for any manors, lands, tenements, or heredita-
 “ ments, which by the laws and statutes of this realm, or
 “ by any privilege or prescription, are not chargeable
 “ with the payment of any such tythes, or that be dis-
 “ charged by any composition real.” *f. 3.*

“ If any person do subtract or withdraw any manner of
 “ tythes, obventions, profits, commodities, or other du-
 “ ties (before mentioned), or any part of them, contrary
 “ to the true meaning of this act, or of any other act

F

“ heretofore

" heretofore made, he may be convented and sued in the
 " King's *ecclesiastical court*, by the party from whom the
 " same shall be substracted or withdrawn; to the intent
 " the King's *ecclesiastical* judge may hear and determine
 " the same, according to the King's *ecclesiastical* laws :
 " and it shall not be lawful to the parson, vicar, pro-
 " prietor, owner, or other their farmers or deputies, con-
 " trary to this act, to convent or sue such withholder of
 " tythes, obventions, and other duties aforesaid, before
 " any other judge than *ecclesiastical*. And if any arch-
 " bishop, bishop, chancellor, or other judge *ecclesiastical*,
 " give any sentence in the aforesaid causes of tythes,
 " obventions, profits, emoluments, and other duties aforesaid
 " (and no appeal or prohibition hanging), and the party
 " condemned do not obey the said sentence, it shall be
 " lawful to every such judge *ecclesiastical* to excommu-
 " nicate the said party, so disobeying : In which sentence
 " of excommunication, if the said party excommunicate
 " wilfully stand, and endure still excommunicate, by the
 " space of *forty days* next after, upon denunciation and
 " publication thereof in the parish church, or the place
 " or parish where the party so excommunicated is dwell-
 " ing, or most abiding, the said judge *ecclesiastical* may
 " then, at his pleasure, signify to the King in *Chancery*,
 " of the state and condition of the said party so excommu-
 " nicate, and thereupon require process *de excommunicato*
 " *capiendo*, to be awarded against every person as hath
 " been so excommunicate." *f. 13.*

" And if the party in such case shall sue for a prohi-
 " bition, he shall, before any prohibition granted, deliver
 " to some of the justices or judges of the court where he
 " demandeth prohibition, a true copy of the libel, sub-
 " scribed by his hand; and under the copy of the said
 " libel shall be written the suggestion whereof he de-
 " mandeth the prohibition : and in case the said sugges-
 " tion, by two honest and sufficient witnesses at least, be
 " not proved true in the court where the said prohibition
 " shall be so granted, within six months next following
 " after said prohibition shall be so granted and awarded;
 " then the party that is letted or hindered of his suit in
 " the *ecclesiastical court* by such prohibition shall, upon
 " his request and suit, without delay, have a consultation
 " granted by the said court; and shall also recover double
 " costs

"costs and damages, against the party that so pursued the prohibition, to be assigned or assessed by the same court; for which costs and damages the party may have an action of debt." f. 14.

"PROVIDED, That nothing herein shall extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter, cause, or thing, contrary to the statute of *Westminster*, 2 c. 5. the statutes of *articuli cleri*, *circumspecte agatis*, *sylvæ cædua*, the *træ-tise de regia prohibitione*, nor against the statute of 1 *Edw.* 3. c. 10. nor to hold plea in any matter whereof the King's court of right ought to have jurisdiction." f. 15.

Truly and justly, without fraud or guile.] See sect. 1. a Inst. 649. of the preceding statute. In the case of *Heale and Sprat*, Tri. 44 Eliz. in a prohibition; the case was, *Heale* did set out his *predial* tythes, and divided them justly from the nine parts, and soon after carried away the same. *Sprat* sued for a subtraction of the same in the *ecclesiastical* court. *Heale* pleaded that he had set them out, as above; whereupon *Sprat* said, that presently after his setting out, he carried the same away, to the defrauding of the statute. *Adjudged*, that this was *fraud* and *guile* within this act; albeit he did justly divide the same within the letter of this law. It was further resolved, that if the owner of the corn before severance grant the same to another, of intent that the grantee should take away the same, to the end to defraud the parson of his tythe, this is *fraud* and *guile* within this statute.

Predial tythes.] This branch of the stat. extends only Vide *Supra*. to *predial tythes*: thus, in the case of *Boot and Southraie*, E. 1. in debt on this statute, by the parson of the church, for not setting forth of the tythes of *cheese*, *calves*, *lambs*, *cherries*, and *pears*, to have the *treble value*; the defendant pleaded *nihil debet*, and it was found against him; and it was moved in arrest of judgment, that the said tythes, of *cheese* or *calves*, and *lambs*, were not *predial tythes*, and therefore not within this branch of the statute; and this act is *penal*, and shall not be taken by *equity*; which was allowed by the whole court.

Within forty years next before the making of this act. 2 Inst. 646. This time of *forty years* is here set down, because *forty* 1 Ought. 263.

years in the ecclesiastical court about tythes make a prescription.

2 Inst. 650.

[Or of right or custom ought to have been paid.] The sense of these words of right ought to have been paid, is of tythes to be yielded in *specie* within *forty* years; and the sense of the words of right or custom is, by rightful custom, *de modo decimandi*.

1 Inst. 159.

2 Inst. 650.

Under the pain of forfeiture of *treble value* of the tythes so taken or carried away. This branch doth not give the forfeiture to any person in certain; and therefore it was pretended, that the forfeiture should be given to the King; and the Attorney-General, *Hil. 29 Eliz.* did exhibit an information in the *Exchequer* against one *Wood*, a parishioner of *Jelington*, in the county of *Cambridge*, for this *treble* forfeiture, for carrying away his tythes before they were justly divided. The defendant pleaded *not guilty*; and was found guilty; and in arrest of judgment it was moved, that in this case the forfeiture was not given to the King; for that the words of the act be, under the pain of forfeiture of *treble value* of the tythe so taken away: and whensoever a forfeiture is given against him, that doth dispossess the owner of his property, as here he doth of his tythes, there the forfeiture is given to the party grieved or dispossessed; and the rather, for that this is an additional law, and made for the benefit of the proprietor of the tythes; and so adjudged by *Manwood* and the whole court of *Exchequer*; and this was the first leading case, that it was adjudged upon this point; and ever since it hath been received for law, that the party interested in the tythes shall in an action of *debt* recover the *treble value*.

Gibb. Cod. 679.

1 Vern. 60.

The *treble value* only, and *not the tythes themselves*, nor any satisfaction for them, may be recovered in the *temporal court*: that being out of the jurisdiction of those courts, and wholly in the *spiritual court*; which is the reason why in all suits upon this statute the action is not laid for subtraction of tythes, but for a contempt of the statute of not setting them out; and being a contempt, the action dies with him who committed the contempt, and doth not lie against his executor.

Watf. c. 58.

Held, that an action grounded on this statute for not setting forth of tythes, is not within the statute of *limitations*; that, not extending to actions grounded on acts
of

of parliament; therefore the plaintiff is not by law confined to *six years*, or to any other time certain, within which to bring his action.

Determined, that this statute, which gives *treble damages*, does not allow the jury to give other damages.— Mo. 915.
No costs being given by the statute; the jury can assess no costs.

Neither *damages* nor *costs* can be recovered with the *treble value*, because the statute has not expressly given them, except that by the statute 8 and 9 W. c. 11. IT IS ENACTED, That in all actions of *debt* on the statute for not setting forth of tythes, wherein the *single value* or *damage* found by the jury shall not exceed the sum of *twenty nobles*, the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, shall recover his *costs of suit*; and if the plaintiff shall become *non suit*, or suffer a *discontinuance*, or a *verdict* shall pass against him, the defendant shall recover his costs.

Shall pay the double value] The reason why only the 2 Inst. 650.
double value is, by this branch of the statute, to be recovered in the *ecclesiastical* court, where, by the former branch, the parson at the *common law* shall recover the *treble*, is, that in the *ecclesiastical* court he shall recover the tythes themselves; and therefore the value recovered in the *ecclesiastical* court is equivalent with the *treble* forfeiture at common law.

Over and besides the costs, charges, and expences.] So that 2 Inst. 651.
the charges in the *ecclesiastical* court is more advantageous than the suit for the *treble* forfeiture at the common law. At the common law he shall recover no costs; but he shall recover in the *ecclesiastical* court, his *costs, charges, and expences*.

May be converted.] In the case of Machin and Molton, Lord Raym. 452
East. 11 W. 3. on motion for the discharge of a rule, 534.
by which prohibition was granted, unless cause shewed, to the consistory court of the Archbishop of York; where Molton, rector of the church of South Collingham, in the diocese of York, preferred a libel against Machin for subtraction of tythes; and the motion for the prohibition was grounded on a suggestion that Machin lived within the diocese of Lincoln, and therefore ought not to be cited out of the diocese where he lived, by statute 23 H. 8. c. 9. the cause which was shewed to the court to discharge

the rule was, Machin had lands within the diocese of York, namely, in the parish of South Collingham: for the tythes of corn growing on which lands, Molton libelled in the consistory court of York; and when the citation was served Machin was there, though he lived generally within the diocese of Lincoln. Holt, Chief Justice, held, That if a man lives within the diocese of *A.* and occupies lands in the diocese of *B.* if he subtracts tythes in *B.* he may be cited and sued there; and is not within the said statute; for when he occupies lands in *B.* that makes him an inhabitant there, and out of the intent of the statute; and by statute 32 *H. 8. c. 7. sect. 2.* the suit for withholding of tythes in exprefs words is appointed to be before the ordinary of the place where the wrong was done.

§ Inst. 662.

By two honest and sufficient witnesses at least.] This clause was made in favour of the clergy, for proof to be made by witnesses, which they had not at the common law. If the suggestion be in the *negative*, as if the proprietary of a parsonage impropriate sue for tythes, and the cause of the suggestion be, that the parsonage is not impropriate; or if a parson sue for tythes of lands in his parish, and the party sue for a prohibition; for that the land lies not in that parish, or that the parson who sues for tythes was not inducted, or any the like cause, in the *negative*, or any matter of fact, he shall not produce any witnesses by force of this branch, because a negative cannot be proved; and therefore a prohibition upon causes in the negative remains as it was at the common law.

Gibb. 699.

Proved true] It is sufficient in this case that enough is proved on which to ground a prohibition, though the suggestion be not shewn to be strictly and wholly true. In a case where the suggestion was for *twenty acres of pasture*, and as many acres of *wood* in lieu of tythes, and proof was only made of the wood; or where the suggestion was for *wool and lamb*, and the witnesses only proved as to the *lamb*; or for a *hundred acres*, when they were only *sixty*; or for *twenty shillings* by way of *modus*, where the sum was *forty shillings*: in these cases, the proofs were adjudged to be sufficient, because enough was proved to shew that the court christian ought not to hold plea thereof. If proof is neither made of the *modus laid*, nor of any other *modus*, then the suggestion is not proved.

Within

Within six months.] If there is no certainty in the first Gibf. 700. proof, it cannot be supplied by good proof after the six months; but if good proof is made within the time, it may be certified after the time.

Six months.] That is, *six calendar months*; and not to ² Salk. 554. be reckoned by *twenty-eight days* to the month.

Six months next following.] Which must be computed ² Salk. 554. from the *teste* of the writ, and not *six months* in the term ^{Ld. Raym. 1172} time only, but the vacation shall be included as part of the time.

Have a consultation granted.] After which the party Gibf. 700. may have a new prohibition on the same libel; for statute 50 Edw. 3. against prohibition after consultation extends not to those consultations which are granted on the matter of the suggestion.

By stat. 7 and 8 W. 3. c. 6. sect. 6. For the more ^{7 & 8 W. 3. cap. 6.} easy and effectual recovery of *small tythes*, and the value of them, where the same shall be unduly subtracted and detained, where the same do not amount to above the *yearly value of forty shillings* from any one person, it is enacted, "That all persons shall well and truly set out
"and pay all and singular the tythes, commonly called
"*small tythes*, and compositions and agreements for the
"same, with all offerings, oblations, and obventions, to
"the several rectors, vicars, and other persons to whom
"they shall be due in their several parishes, according to
"the rights, customs, and prescriptions commonly used
"within the said parishes respectively; and if any person
"shall subtract or withdraw, or any ways fail in the true
"payment of such small tythes, offerings, oblations, obventions, or compositions, by the space of twenty days
"at most after demand thereof, it shall be lawful for the
"person to whom the same shall be due to make his
"complaint in writing to two or more justices of the peace
"within that county, place, or division, where the same
"shall grow due; neither of which justices is to be patron
"of the church or chapel whence the said tythes shall
"arise, nor any ways interested in such tythes, offerings, oblations, obventions, or compositions aforesaid."

"And on such complaint the said justice shall summon
"in writing under their hands and seals, by reasonable
"warning, every such person against whom such complaint shall be made; and after his appearance, or upon
"default

“ default of appearance, the said warning or summons
 “ being proved before them upon oath, the said justices
 “ shall proceed to hear and determine the said complaint;
 “ and upon the proofs, evidences, and testimonies pro-
 “ duced before them in writing under their hands and seals
 “ adjudge the case, and give such reasonable allowance
 “ and compensation for such tythes, oblations, and com-
 “ positions so subtracted or withheld, as they shall judge
 “ to be just and reasonable, and all such costs and charges
 “ not exceeding *ten shillings*, as upon the merits of the
 “ cause shall appear just.” *f. 2.*

27 Geo. 2. c. 20.

“ If any person shall refuse or neglect, for the space of
 “ ten days after notice given, to pay or satisfy any such
 “ sum of money, as upon such complaint and proceeding
 “ shall by two such justices be adjudged as aforesaid; in
 “ every such case, the constables and churchwardens of
 “ the said parish, or one of them, shall, by warrant under
 “ the hands and seals of the said justices to them directed,
 “ distrain the goods and chattels of the party so refusing
 “ or neglecting as aforesaid; and after detaining them,
 “ (not less than *four days*, nor more than *eight*, by stat.
 “ 37 Geo. 2. c. 20.) in case the said sum adjudged, together
 “ with reasonable charges of making and detaining the said
 “ distress, be not tendered or paid by the said party in the
 “ mean time, shall make public sale thereof, and pay to
 “ the party complaining so much of the money arising by
 “ such sale as may satisfy the said sums so adjudged, re-
 “ taining to themselves such reasonable charges for making
 “ and keeping the said distress as the said justices shall think
 “ fit; and also deducting their reasonable charges of sell-
 “ ing the said distress; returning the overplus (if any shall
 “ be) to the owner upon demand.” *f. 3.*

“ And the said justices shall have power to administer
 “ an oath.” *f. 4.*

“ PROVIDED, That this act shall not extend to any
 “ tythes, oblations, payments, or obventions, within the
 “ city of London, or liberties thereof; nor to any other
 “ city or town-corporate where the same are settled by act
 “ of parliament.” *f. 5.*

“ And no complaint shall be heard and determined by
 “ the said justices, unless the complaint shall be made
 “ within *two years* next after the time that the same tythes,
 “ oblations,

“oblations, obventions, and compositions did become due.” *f.* 6.

“PROVIDED ALSO, That any person finding himself aggrieved by any judgment to be given by such two justices, may appeal to the next general quarter-sessions to be held for that county, or other division; and the justices there shall proceed finally to hear and determine the matter; and to reverse the said judgment, if they shall see cause; and if they shall find cause to confirm the said judgment, they shall decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable, and no proceedings or judgment had by virtue of this act, shall be removed or superseded by any writ of *certiorari*, or other writ out of his Majesty's courts of Westminster, or any other court, unless the title of such tythes, oblations, or obventions, shall be in question.” *f.* 7.

“PROVIDED, That where any person complained of for subtracting or withholding any small tythes, or other duties aforesaid, shall, before the justices to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement or title, whereby he ought to be freed from payment of the said tythes, or other dues in question, and deliver the same in writing to the said justices, subscribed by him, and shall then give to the party complaining reasonable and sufficient security, to the satisfaction of the said justices, to pay all such costs and damages, as upon a trial at law to be had for that purpose in any of his Majesty's courts, having cognizance of that matter, shall be given against him, in case the said prescription, composition, or *modus decimandi*, shall not, on the said trial, be allowed; in that case, the said justices shall forbear to give any judgment in the matter; and then, and in such case, the party complaining shall be at liberty to prosecute such person for his said subtraction in any other court, where he might have sued before the making of this act.” *f.* 8.

“And

“ And every person who shall, by virtue of this act, obtain any judgment, or against whom any judgment shall be obtained before any justices of the peace out of sessions for small tythes, oblations, obventions, or compositions, shall cause, or procure the said judgment to be enrolled at the next general quarter-sessions, to be held for the said county, or other division; and the clerk of the peace shall, upon tender thereof, inroll the same; and shall not receive for the inrolment of any one judgment any fee or reward exceeding *one shilling*; and the judgment so inrolled, and satisfaction made by paying the sum adjudged, shall be a good bar to exclude the said rectors, vicars, and other persons, from any other remedy for the said small tythes, oblations, obventions, or compositions, for which the said judgment was obtained.” *f. 9.*

“ If any person, against whom such judgment shall be had, shall remove out of the county or other division, before the levying of the sum adjudged, the justices who made the judgment, or one of them, shall certify the same, under hand and seal, to any justice of such other county or place wherein the said person shall be an inhabitant, who shall, by warrant under his hand and seal to be directed to the constables or church-wardens of the place, or one of them, levy the sums so adjudged to be levied upon the goods and chattels of such person as fully as the said other justice might have done, if he had not removed as aforesaid.” *f. 10.*

“ And the justices, who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious, to be levied in manner and form aforesaid.” *f. 12.*

“ And if any person shall be sued for any thing done in the execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, such person shall recover double costs.” *f. 13.*

“ PROVIDED, That any clerk, or other person, who shall begin any suit for recovery of small tythes, oblations, or obventions, not exceeding the value of forty shillings, in his Majesty’s court of Exchequer, or in any
“ the

“ the ecclesiastical courts, shall have no benefit by this
 “ act for the same matter for which he hath so sued.”
 f. 14.

Complaint in writing.] See *sect. 1. of the foregoing sta-* Stat. 264.
tute. Order for non-payment of small tythes was quashed,
 because said only upon complaint *generally*; and the 7
 & 8 W. 3. c. 6. requires the complaint to be in writ-
 ing.

By stat. 7 and 8 W. 3. c. 34. “ Whereas by reason of Stat. 7 and 8
 “ a pretended scruple of conscience, quakers refuse to pay W. 3. cap. 34.
 “ tythes and church-rates, it is enacted, That where any
 “ quaker shall refuse to pay or compound for his great or
 “ small tythes, or to pay any church-rates, it shall be
 “ lawful for the two next justices of the peace of the same
 “ county (other than such justice as is patron of the
 “ church or chapel, whence the said tythes shall arise, or
 “ any ways interested in the said tythes), upon the com-
 “ plaint of any parson, vicar, farmer, or proprietor of
 “ tythes, church-warden or church-wardens, who ought
 “ to have, receive, or collect the same, by warrant under
 “ their hands and seals, to convene before them such qua-
 “ ker or quakers neglecting or refusing to pay or com-
 “ pound for the same, and to examine upon oath (or af-
 “ firmation, in case of the examination of a quaker) the
 “ truth and justice of the said complaint, and to ascertain
 “ and state what is due and payable; and by order under
 “ their hands and seals, to direct and appoint the payment
 “ thereof, so as the sum ordered do not exceed ten pounds;
 “ and upon refusal to pay according to such orders, it shall
 “ be lawful for any one of the said justices, by warrant
 “ under his hand and seal, to levy the same by distress and
 “ sale of the goods of such offender, his executors or ad-
 “ ministrators, rendering only the overplus to him or
 “ them; the necessary charges of distraining being there-
 “ out first deducted and allowed by the said justice. And
 “ any person finding himself aggrieved by any judgment
 “ given by such two justices, may appeal to the next gene-
 “ ral quarter-sessions to be held for the county, riding, city,
 “ liberty, or town-corporate; and the justices thereof shall
 “ proceed finally to hear and determine the matter, and to
 “ reverse the said judgment, if they see cause; and if they
 “ shall find cause to continue the said judgment, they shall
 “ then decree the same by order of sessions, and shall
 “ also

“also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had by virtue of this act shall be removed or superseded by any writ of *certiorari*, or other writ out of his Majesty’s courts at *Westminster*, or any other court whatsoever, unless the title of such tythes shall be in question.”

“PROVIDED, That in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined.” *f. 5.*

Stat. 1 Geo. 1.
Stat. 2. cap. 6.
sect. 2.

By stat. 1 Geo. 1. *ft. 2. c. 6. sect. 2.* the like remedy shall be had against any quaker or quakers, for the recovery of any tythes or rates, or any customary or other rights, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid, for the stipend or maintenance of any minister or curate officiating in church or chapel; and any two or more justices of the peace of the same county or place (other than such justice as is patron of any such church or chapel, or any ways interested in the said tythes), upon complaint of any parson, vicar, curate, farmer, or proprietor of such tythes, or any church-warden or chapel-warden, or other person who ought to have, receive, or collect any such tythes, rates, dues, or payments, as aforesaid, are authorized and required to summon, in writing under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made; and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein as in the aforesaid act is limited; and also to order such costs and charges as they shall think reasonable, not exceeding *ten shillings*, as upon the merits of the cause shall appear just: which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter-sessions, with such costs and remedy for the same; and shall not be removed into any other court, unless the titles of such tythes, dues, or payments shall be in question; in like manner as by the aforesaid act is limited and provided.

By

By stat. 27 G. 2. c. 20. which directs in what manner Stat. 27 Geo. 2. c. 20.
distresses shall be made by justices of the peace, and which gives to the justices power to order the goods distrained to be kept for a certain time before they be sold, and gives power also to the officers making the distress to deduct their reasonable charges, it is provided, that the same shall not extend to alter any provisions relating to distresses to be made for the payment of tythes and church-rates by the people called quakers, contained in statutes 7 & 8 W. 3. c. 34. and stat. 1 Geo. 1. st. 2. c. 6.

Notwithstanding all these statutes, tythes (if of any considerable value) are now generally sued for in the courts of equity by English bills, and for the most part in the Exchequer; but not upon the statute for *treble* or *double* value: for there can be no suit in *equity* for the recovery of the *double* or *treble* value. Wood, b. 2. c. 2. Will. 463.

If the incumbent dies, his executor may recover the tythes which became due in the testator's life-time; but he is not entitled to the *treble value* upon the statute. 1 Vern. 60.

By statute 11 Geo. 2. c. 19. sect. 15. "Where any tenant for life shall happen to die *before*, or *on the day on* Stat. 11 Geo. 2. cap. 19. sect. 15.
"which any rent was reserved, or made payable, upon
"any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant
"for life; the executors or administrators of such tenant
"for life shall and may, in an action on the case, recover
"of and from such under-tenant of such lands, tenements,
"or hereditaments, if such tenant for life die on the day
"on which the same was made payable, the whole, or if
"before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last
"year, or quarter of a year, or other time in which the
"said rent was growing due as aforesaid; making all just
"allowances, for a proportionable part thereof respectively."

By stat. 5 Geo. 3. c. 17. intitled, An act to confirm all Stat. 5 Geo. 3. cap. 17.
leases already made by Archbishops and Bishops, and other ecclesiastical persons, of tythes, and other incorporeal hereditaments, for one, two, or three lives, or twenty-one years; and to enable them to grant such leases, and to bring actions of debt for recovery of rents reserved and in arrear, on leases for life or lives.

"For

" For obviating all doubts, and enabling archbishops
 " and bishops, master and fellows, or other heads and mem-
 " bers of colleges or halls, deans and chapters, precentors,
 " prebendaries, masters and guardians of hospitals, and
 " other ecclesiastical persons, to make valid leases of their
 " incorporeal hereditaments, and to recover the rent or
 " yearly sum mentioned to be reserved on any leases by
 " them already granted or to be granted, for any one,
 " two or three lives, as aforesaid; and also to make good
 " and effectual all such leases as have already been granted
 " by them: be it therefore enacted, &c. that all leases
 " for one, two, or three life or lives, or any term not
 " exceeding twenty-one years, already made and granted,
 " or which shall at any time from and after the passing this
 " act be made or granted, of any tythes, tolls, or other
 " incorporeal hereditaments, by any archbishop or bishop,
 " master and fellows, or other head and members of col-
 " leges or halls, deans and chapters, precentors, preben-
 " daries, masters and guardians of hospitals, and every
 " other person and persons, who are enabled by the feve-
 " ral statutes now in being, or any of them, to make any
 " lease or leases for one, two or three life or lives, or any
 " term or number of years, not exceeding twenty-
 " one, of any lands, tenements, or other corporeal here-
 " ditaments, shall be, and are hereby deemed and declared
 " to be, as good and effectual in law against such arch-
 " bishop, bishop, master and fellows, or other heads and
 " members of colleges or halls, deans, and chapters, pre-
 " centors, prebendaries, masters and guardians of hospi-
 " tals, and other persons so granting the same, and their
 " successors and every of them, to all intents and pur-
 " poses, as any lease or leases already made, or to be made
 " by any such archbishop or bishop, master and fellows,
 " or other heads and members of colleges or halls, deans
 " and chapters, precentors, prebendaries, masters and
 " guardians of hospitals, and other persons having spiri-
 " tual promotion, of any lands or other corporeal heredi-
 " taments, now are, by virtue of the statute of the thirty-
 " second year of King Henry the Eighth, or any other
 " statute now in being," / 1.

" PROVIDED ALWAYS, that nothing herein contained
 " shall extend, or be construed to extend, to enable any
 " master and fellows, or other heads and members of col-
 " leges

“leges or halls, deans and chapters, prebendaries, masters and guardians of hospitals, or other ecclesiastical persons as aforesaid, to grant leases for any longer or other terms than by the local statutes of their several foundations they are now respectively enabled to do.” *f. 2.*

“And in case the rents, yearly sum or sums, reserved or made payable in or by any lease or leases, made by any archbishop, bishop, &c. &c. shall be behind or unpaid by the space of *twenty-eight days* next over or after any of the days whereon the same shall be reserved and made payable; then, and so often, and from time to time, as it shall so happen, it shall and may be lawful for such archbishop or bishop, master and fellows, &c. &c. or their executors, administrators, and successors respectively, to bring actions of debt against the lessee or lessees, to whom any such lease or leases, for life or lives, or years, now are, or hereafter shall be made and granted to his, her, or their heirs, executors, administrators, or assigns, for recovering the rent or rents which shall be then due and in arrear, to any such archbishop, bishop, &c., his executors, administrators, or successors, in such and the same manner, as fully and effectually, to all intents and purposes as any landlord or lessor, or other person or persons, could or might do for recovering of arrears of rent due on any lease or leases, for life or lives, or years, by the laws now in being.” *f. 3.*

“And this act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such in all courts of law and equity, without specially pleading the same.” *f. 4.*

CHAP. VII.

What Leases, Parsons, Vicars, and other Ecclesiastical Persons may make of their Glebe, Tythes, Farms, &c.

AT common law, no bishop, abbot, prior, dean, prebend, or other single corporation, could make any alienation or lease to bind his successors, without the confirmation of their chapter, convent, &c.

The

Stat. 32 Hen. 8. The first statute that made any alteration was the statute of 32 H. 8. commonly called the *Enabling Statute*; whereby it is enacted,

“ That all leases then after to be made of a manor, lands, tenements, or hereditaments, by writing under hand and seal, for term of years, or for term of life, by any parson or parsons of the full age of *twenty-one years*, having any estate of inheritance either in *fee-simple* or *fee-tail*, in their *own rights*, or in the *right* of their *churches*, &c. shall be good and effectual in the laws against the lessors, their wives, heirs, and successors.”

“ PROVIDED, That same shall not extend to any lease of any manors, &c. where any old lease should be in being, unless the same expire, be surrendered or ended within *one year* after the making of such new lease, nor shall extend to any grant to be made of any reversion of any manors, &c. nor to any lease of any manors, &c. which have not most commonly been letten to farm, or occupied by the farmers thereof, by the space of *twenty years* next before such lease thereof made, nor to any lease to be made without impeachment of waste, or to any lease to be made above the number of *three lives*, or *twenty-one years* at the most, from the day of the making thereof; and that upon the making of every such lease there be reserved yearly, during the said lease, due and payable to the said lessors, their heirs and successors, to whom the reversion shall appertain, &c. so much yearly farm or rent, or more, as hath most accustomedly been yielded and paid for the said manors, &c. so to be letten within *twenty years* next before the lease thereof made, &c.”

“ This statute not to extend to give any liberty or power to any parson, vicar, &c. to make any lease or grant of any of their messuages, lands, tythes, &c. or in any other manner than they should or might have had before the making same.”*

The requisites to constitute an ecclesiastical lease under the Statutes.

1st. “ Such lease must be made by *writing indented*, and not by parol or deed poll.”

2d “ It must be made *to begin from the making*, or day of the making of such lease.”

* Before this statute no archbishop, bishop, archdeacon, dean, or prebend, could have made any lease to have bound his successors without the confirmation and consent of their chapters, &c. as aforesaid; but now they are enabled to make leases for their lives, or one-and-twenty years, without any confirmation at all with the above qualifications.

3d. “ If

3d. "If there be *any old lease* in being at the time of the making of such lease, *it must expire, be surrendered or ended within a year* after the making of such new lease, and such surrender must be absolute, and not upon condition."

4th. "There *must not be a double lease* in being at one and the same time; the one for years, and the other for lives."

5th. "Such lease must be of *lands manurable or corporeal*, which is necessary to be letten, and out of which a rent may be reserved, and not of things *that lie merely in grant*, as fairs, markets, tythes, tolls, franchises, advowsons, &c."

6th "Such lease must be of lands, &c. which have *most commonly been letten to farm*, or occupied by the farmers thereof for the most part of twenty years before the making of such lease: so if they have been to let for *eleven years* within twenty years next before the making of the new lease, it suffices: and a letting to farm by copy of court-roll, is a sufficient letting to farm within this statute, to enable the making of such new lease."

7th. "*There must be reserved* upon every such lease, and payable during the continuance thereof to the lessor, his successors, &c. *so much farm or rent as hath most accustomedly been yielded* and paid for the land so demised within twenty years next before such lease made: so that it sufficeth, if the yearly rent or farm be reserved, though heriots and other casual services be omitted; so if a greater rent than formerly be reserved, it sufficeth: but if the lessor reserve a less rent than the ancient during his life, and after the full rent, yet it is naught, because it must be reserved *during the whole term*: so if lands usually letten be demised with any other lands, &c. though a rent be reserved that exceeds the value of those lands and the old rent; yet such lease is not good against the successor within this law. But if the rent were formerly reserved to be paid at four several days, and by the new lease be reserved to be paid all at once, so the whole rent be reserved yearly, it is well enough."

If a bishop, &c. have two distinct manors, that have Reb. 192—372 anciently been demised together, and one entire rent re- 1 Mod. 208.
served 2 Mod. 87.

served for both manors; and these being out of lease, the bishop, &c. may demise them severally, reserving several rents amounting to the whole ratably. These have been adjudged in the *Common Pleas* to be good, and affirmed in error in the *King's Bench*; on this principle, that if a termor for life should lease part for years, and then surrender and accept a new lease, rendering the *ancient* rent, it would be a good lease, *tamen quære*: for of that part leased by the termor, there would be two leases on foot together; but if the new lease were only of the lands not demised by the termor, then it seems good.

8th. "Lastly; Such lease *must not be without impeachment of waste*; and therefore a lease to one for life, remainder to another for life, remainder to a third for life, is not good against the successor, though but for three lives, because the remainders make the present tenants punishable for waste for the time."

Co. 2. 706.

A lease for *ninety-nine years*, if three lives live so long, is not good within this statute.

By 1. *Elizabeth*, "All gifts, grants, feoffments, fines, and other conveyances and estates, from the *first* day of that present parliament, to be had, made, done, or suffered, by any archbishop or bishop of any honours, castles, manors, lands, tenements, or other hereditaments, being part of the possessions of his archbishoprick or bishoprick, or united, appertaining or belonging to any the same archbishopricks or bishopricks, to any person or persons, bodies politick or corporate (other than the Queen's Majesty, her heirs and successors*), whereby any estate or estates should or might pass from the said archbishops or bishops, or any of them, other than for the term of *twenty-one years*, or *three lives*, from any such time as any lease, grant, or assurance shall begin, and whereupon the old accustomed yearly rent or more shall be reserved and payable yearly during the said term of *twenty-one years*, or *three lives*, shall be utterly void and of none effect, to all intents, constructions, and purposes."†

Though this statute enacts, *That all leases made in any other form shall be void and of none effect, to all intents and*

* This exception or reservation to the Queen is made void by 2 Jac. 6. 3.—E.

† This being a *private act*, must in all cases be pleaded, and cannot be given in evidence.—E.

pur-

purposes, yet it hath been adjudged, that it is only to be intended as against the successors, and that leases made in other forms shall be good, notwithstanding against the party himself that makes them, and may be affirmed by the successor, by the receipt of the rent reserved thereupon.

Though this statute do not restrain demising of any lands not formerly demised, yet it does it by implication: for the accustomable rent must be reserved, and unless accustomedly let, there cannot be an accustomable rent; and leases within this statute must have all the restrictions in statute 32 H. 8.

It must be of things manurable. *Vide Co. 5. 3. a.* out of which a rent may be reserved. Of what things such leases may be made.

On stat. 32 Hen. 8. & 1 Eliz. it has been held, that archbishops and bishops may, with confirmation of the dean and chapter, make concurrent leases, that is, notwithstanding there be a lease in being for *twenty-one years*, they may make a new lease of the same lands to another for *twenty-one years* from the making thereof; and this being confirmed as aforesaid, shall bind the successor, the other things being observed in it. Concurrent leases. 1 Inst. 45. 8. More 66. 1 Inst. 45. a.

Sir Edward Coke is of opinion, that like *concurrent leases* may be made by *deans, prebends, &c.* with confirmation: though some learned men are not satisfied concerning *concurrent leases*, because by these *concurrent leases* the successor loses his remedy for his rent by distress during the former term, and the tenant may be insolvent as to an action of debt. A *concurrent lease* for *lives* is not good, because upon such lease, the lessor would have no remedy for his rent. 1 Inst. 45. a. More 253. Cro. Eliz. 141.

The next restrictive statute is 13 Elizabeth, whereby it is enacted, "That from thenceforth all *leases, gifts, grants, feoffments, conveyances* or *estates*, to be made, had, done, or suffered by the *masters and fellows* of any college, dean and chapter of any cathedral or collegiate church, *master or guardian* of any hospital, *parson, vicar*, or any other having a *spiritual or ecclesiastical* living, or any houses, lands, tythes, tenements, or other hereditaments, being any part of the possessions of any such college, &c. or anywise appertaining or belonging to the same, or any of them, to any person or persons, bodies, &c. (other than for the term of *twenty-one years*, or *three lives*, from the time as any such lease or grant shall

The restrictive statute against leases of deans, prebends, &c."

" shall be made or granted, whereupon the accustomed
 " yearly rent or more shall be reserved and payable during
 " the said term) shall be utterly void, &c."

Co. 5. 146.

The penning of this statute, and 1 *Eliz.* being in effect the same in substance, the construction is the same; though in this there was no saving of grants to the King, and therefore being for the public good, had restrained other grants to him not warranted by this, though stat 1 *Jac.* cap. 3. had never been made.

Parsons and vicars restrained by this statute.

" *Parsons and vicars had not their power anywise enlarged by statute 32 H. 8.* they had no restriction on them till this statute; but from henceforth they are restrained from making any lease or grants, other than for twenty-one years, or three lives, with the qualifications in the above statutes, and such leases must be confirmed by the patron and ordinary, because excepted in the Enabling Statute of 32 *Hen. 8.*"

After making of this statute, heads of colleges, deans, prebends, &c. might have made concurrent leases, as well as bishops.

No concurrent lease but within three years before the former ends.

The 13 *Eliz.* contains the following proviso, viz. That all leases then after to be made by any of the aforesaid ecclesiastical, spiritual or collegiate persons, or others, of any of their ecclesiastical, &c. lands, &c. whereof any former lease for years is in being and not expired, surrendered or ended within three years next after the making of any such new lease, should be utterly void, frustrate, and of none effect, any law, &c.*

Bonds and covenants contrary to these statutes are void.

By provision in statute of 18 *Eliz.* all bonds and covenants then after made for the making or renewing any lease contrary to the intent of that statute, or statute of 13 *Eliz.* c. 10. should be utterly void.

Leases of parsons to be void by non-residence.

By stat. 13 *Eliz.* it is enacted, " That no lease of any benefice or ecclesiastical promotion, with cure of any part thereof, and not being impropriated, should endure any longer than while the lessor should be ordinarily resident and serving the cure of such benefice, without absence above fourscore days in any one year; but that every such lease (so soon as it, or any part thereof, should come

* Bishops are conceived not to be comprehended within this proviso; for though the words are general enough, yet the particulars menti-

oned before the general words being of an inferior rank, the general words cannot draw in the more worthy.

" 11

“ to any possession above forbidden, or) immediately upon
 “ such absence, shall cease and be void, and the incumbent
 “ so offending shall, &c. lose one year’s profit of his said
 “ benefice, to be distributed by the ordinary to the poor
 “ of the parish.”

Note. The words in italics are repealed by stat. 14 Eliz. cap. 11.

By same statute, “ All charging of such benefices, with
 “ cure then after, with any pension, or with any profit
 “ out of the same, to be yielded or taken, other than rents
 “ reserved upon leases, shall be void.”

Charges on parsonages make the grant of same void.

Where any parson should be qualified to have *two livings*, he may demise the one of them, where he is not ordinarily resident, to his curate only, that shall there serve the cure. But such lease shall endure no longer than during such curate’s residence without absence above forty days in any one year.

In what case a parson may demise notwithstanding his non-residence.

By stat. 4 Elizabeth, All leases, bonds, promises, and covenants, of and concerning benefices and ecclesiastical livings, with cure to be made by any curate, shall be of no other, or better force, validity, or continuance, than if the same had been made by the beneficed person himself, that shall demise the same to such curate.

Leases, bonds, and covenants, to be void.

By same statute it is enacted, That the *restrictive statute* 13 Eliz. c. 10. shall not extend to any grant, assurance, or lease of any houses belonging to any the persons, &c. in stat. 13 Eliz. nor to any grounds to any such houses appertaining, &c. in any city, borough, town-corporate, or market-town, or the suburbs of any of them ; but that all such houses and grounds may be granted, demised, and assured, as they might have been before the making of the same, so always as such house be not the capital, or dwelling-house used for the habitation of the parsons, &c. nor have above ten acres of the same.

Houses in corporations, &c. how to be leases.

That no lease be made by virtue of this act in reversion, nor without reserving the accustomed yearly rent at least ; nor for a longer term than forty years at most, charging the lessee with repairs, and no alienation in fee, unless lands of as good yearly value be settled, &c. in lieu thereof.

Not to leases in reversion.

By a proviso in this statute, all bonds, contracts, promises, and covenants, to be made for the suffering or permitting any person to enjoy any benefice or ecclesiastical promotion with cure, or to take the profits or fruits thereof, other than such bonds or covenants as shall be made for

Bonds, contracts, covenants, promises, in what case void.

assurance of any lease heretofore made, shall be of no other force than leases made by the same person.

Offences against this statute to be made to the ordinary.

By stat. 18 *Eliz. c. 11.* it is enacted, That after complaint made to the ordinary, and sentence given upon any offence committed by the incumbent against statute of 13 *Eliz. c. 20.* whereby he shall or ought to lose a year's profit of his benefice, &c. then the ordinary within *two months* after such sentence and request made by the churchwardens of the parish, where, &c. or one of them, shall grant the sequestration of such profits to such inhabitant or inhabitants within the same parish, &c. as to him shall seem meet, &c.

Any parishioner may avail himself of a breach of this statute.

On default of the ordinary, it shall be lawful for every parishioner, &c. to retain, &c. his tythes, and for the churchwardens to enter upon the glebe-land, rents, and duties of every such benefice to be employed to the use of the poor, &c. until such time as sequestration shall be committed by the ordinary; and then the churchwardens and parishioners to account to such to whom the sequestration shall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withholden, to be recovered in the ecclesiastical court by the poor of the parish.

Co. Litt. 44. 45.

On these restrictive statutes, two observations arise, viz. First; That they do not by any construction enable any persons to make such leases as they were by *common law* disabled to make. A parson or vicar, though he is restrained from making longer leases than for *twenty-one years*, or *three lives*, even with the consent of patron and ordinary; yet is not enabled to make any lease at all, so as to bind his successors, without obtaining such consent: Secondly; That though leases contrary to these acts are declared void, yet they are good against the lessor during his life, if he be a sole corporation, and are also good against an *aggregate* corporation, so long as the head of it lives, who is presumed to be the most concerned in interest. For these statutes were intended for the benefit of the successor *only*, and no man shall make an advantage of his own wrong.*

If

* By the foregoing statutes it appears, that archbishops and bishops may make leases for *twenty one years*, or for *one, two, or three lives*, with the qualifications

If a bishop had two chapters, and one of them surrenders, is suspended or dissolved, the confirmation of the other suffices.

There is a case in Mr. Justice Harpur's Reports, where the case is put, that a bishop made a lease, dated 2 *die Maii*, confirmed the third day, and sealed the fourth day of May, and held a good lease, and well confirmed.

A confirmation by the dean and chapter after the death of the bishop, comes too late; so held by *Catlyn*, *Suthcoate*, and *Windham*, against *Wray*.

If a bishop make several concurrent leases, and the latter is first confirmed, and after the first is confirmed; in this case, the first lease shall be preferred, because nothing passes by the confirmation in point of interest but a mere consent.

If a bishop make a grant to the King, which is confirmed by the dean and chapter before the grant is inrolled, this is well enough.†

Deans, prebendaries, heads of colleges, masters of hospitals, and other ecclesiastical persons mentioned in statute 13 *Eliz. c. 10*, may make leases for *twenty-one years*, or any lesser number of years, for one, two, or three lives in possession, according to the qualifications above-mentioned; and they may make concurrent leases as bishops may with confirmation; but they must be within three years of the determination of the former term by expiration, surrender, or otherwise: so that in this point the bishop has the advantage.

The enabling statute of 32 *H. 8.* gives power to make leases, to hold from the making, or day of the making; yet the restrictive statute of 13 *Eliz.* makes them void, if they be not made to hold from the making, and not from the day of the making; but the leases of bishops and archbishops are not within that act.

qualifications before-mentioned, without any confirmations at all: and they may make concurrent leases for *twenty-one years*, upon leases for *twenty-one years* from the making, with confirmation of the dean and chapter, with such qualifications as is aforesaid, though there be above three years in being of the old lease

at the time of the making the new; and where the bishop has two chapters, there the concurrent lease must be confirmed by both chapters.

† A bishop cannot make a concurrent lease for life, though upon a precedent lease for years, nor a concurrent lease for years, where there is a lease for life in being.

All concurrent leases of any bishop, dean, prebend, and archdeacon, are to be confirmed; the leases of bishops and archbishops are to be confirmed by the dean and chapter, or deans and chapters, if there be several chapters.

Grants made by a prebend are to be confirmed by the bishop, dean and chapter.

Grants made by deans are to be confirmed by the bishop and chapter.

Grants made by the archdeacon, by the bishop, dean, and chapter.

Grants of parsons and vicars, by their patrons and ordinaries.

Grants by the incumbent of a donative, by the patron alone.

If a parson makes a lease, which is confirmed by the bishop *only*, who is patron, without the dean and chapter, which ought to have joined, it shall bind the successor during the lives of the bishop and incumbent, although the bishop be translated.

Grants by parsons, vicars, prebends, &c. before induction or installation, &c. although confirmed, are not binding to the successor.

If the King be patron of a prebendary, then the King and dean and chapter, and not the bishop, ought to confirm the grant.

A lease made by a prebend, parson, vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the land to the lessee for so many years of the term; but if the term be confirmed for part of the term, it were absurd and repugnant, and should be good for the whole term: and as such lease may be confirmed for part of the term, so it may be for part of the land.

If a parson, &c. make a grant, which is confirmed by the patron and ordinary, and after be deprived, yet the grant is good.

A husband seized in the right of his wife of an advowson, the parson makes a lease warranted by the statutes before-mentioned, and the bishop and husband confirm it; this shall not bind the right of the wife but during the husband's life, but that the successor after his death will

will avoid it, that comes in by the presentation of th wife.

If a tenant *in tail*, being patron, confirm the grant of the parson with the bishop, this shall not bind the incumbent of the issue in tail.

If an usurper present, and confirm the lease of his incumbent with the bishop, and after is removed by writ of *quare impedit*, &c. this shall not bind the clerk of the true patron.

If the true patron grant the next avoidance, and then confirm the grant of the parson, who after dies, the incumbent presented by him that had the next avoidance shall avoid the lease, and his very entry upon the lessee avoids the lease for ever.

If the parson makes a lease to the patron, which is confirmed by the bishop, this is not good; but if the patron grants it over, it amounts to a confirmation.

If a prebend, parson or vicar, make a lease, and the bishop, being patron, confirms it without the dean and chapter, yet this shall bind the bishop and all the prebends, parsons, &c. which he shall collate.

If a parson had made a lease for above *twenty-one years* before statutes 13 & 14 *Eliz.* which had been confirmed after; this had been good, and not within the restriction of those laws.

If a parson leases where there are two patrons, both ought to confirm.

If the patron and a succeeding bishop confirm the lease of the parson, it is good enough.

A prebend made a lease, reciting that it was with the consent of the bishop, who signed and sealed the lease to the lessee, but was no party to the deed.*

By the *common law*, a parson or vicar might have granted or charged his glebe in fee-simple, with the confirmation of the patron and bishop; but being excepted out of the enabling statute 32 *H.* 8. he could never make any lease or grant to bind their successors without such confirmation; then by statute 13 *Elizabeth*, parsons and vicars are restrained: so that they cannot grant but for *eleven years*, or *three lives* from the making of such lease, and not from the day of the making as is before observed;

* This grant has been questioned.—E.

and

and these leases and grants must be with the confirmation of the patron and ordinary, with all the qualifications expressed in the beginning of this chapter.

They may make concurrent leases, as deans, prebends, &c. may do within *three years* of the end of the former leases.

It has been a question, Whether a parson or vicar at this day can make any lease at all to bind his successor?

For by statute 13 *Eliz. cap. 20.* it is enacted, That leases of parsons, vicars, &c. that have cure of souls, shall endure no longer than they shall be ordinarily resident, and serve the cure; and that if such parson, &c. shall be absent from their cure above *eighty days* in *one year*, that then such lease shall cease, and be void.

When a parson dies, and *eighty days* incur, and this being a law for the advancement of religion and hospitality, to avoid dilapidations, it shall have an equitable construction for the preferring these ends: therefore some have held, that the death of the parson, vicar, &c. after *eighty days* have incurred from their deaths, shall make all their leases and grants void, though never so sufficiently confirmed; and rely very much upon the preamble of the statute, which begins, "That the livings appointed for ecclesiastical ministers may not by corrupt and indirect dealings be transferred to other uses: be it enacted, &c. but by these leases it is apparent the profits are converted to other uses, &c."

Others have held the contrary opinion, because such absence is not voluntary, but by the act of God, and regularly these cannot be said absent that are not in *esse*.

Crook reports in Mott and Hale's case, adjudged in point, that their leases are void by death; yet *More* reporting the same case, says, "As to the matter in law, the judges were divided, two against two, and that the judgment was given upon a misrecital of the statute."

There is a *quære* in *Dyer*, whether such leases shall be void upon *eighty days* absence *ab initio*, or but from the time of absence by *eighty days*; but it seems to me with some clearness, that it shall only be void from *eighty days* absence, and not *ab initio*.

For first; The words of the statute are, "That such lease shall endure no longer than the lessor shall be ordinarily resident, &c." so that till then it is to endure;

dure; and the statute closes, "That upon such absence the term shall cease," which it could not do if it had not a being before; for a thing cannot cease to be that has not been.

Another *quære* may be started in this case upon the reason in the *Lincoln College case*, whether such lease shall be void against the present incumbent that made it, or only against his successors.

It seems that the intent of the makers of this act was, to make such lease void against the lessor himself upon such absence: for, as before is said, the statute says, "it shall endure no longer," which is a term of limitation, and that immediately upon such absence, the lease shall cease, and be void; and it cannot cease immediately upon the absence, and yet be good during the life of the incumbent.

In the case of *Ruel versus Hart*, stat 43 Eliz. B. R. the court held the contrary.

If any parson, vicar, &c. be suspended, inhibited, or disabled to serve the cure by the space of *eighty days* in a year, this shall not make such lease void, for the not serving the cure must be voluntary.

It hath been held, that if a parson be resident, and do not serve the cure, or serve the cure and be absent by *eighty days*, that in both these cases it will make such lease void.

Though this statute on *eighty days* absence makes such lease void made by parsons and vicars, and says nothing of confirmation; yet a confirmation of the patron and ordinary in this case seem not to amend the matter; for if the lease be void, the confirmation is of no avail.

At the *common law*, if a parson, vicar, &c. had made a lease and resigned, the next incumbent might have entered immediately upon the lessee.

Bonds, Covenants, &c. void within 18 Eliz.

Covenants, bonds, &c. made for the enjoying houses within cities, corporations, &c. are not void, within this law; for this law makes no bonds, covenants, &c. void, which are not against the intent of this statute, and the statute 13 Eliz. cap. 10. but leases of houses and lands in cities, &c. by statute 14 Eliz. cap. 11. are exempted out of 13 Eliz. cap. 10. and are not within statute 18 Eliz.

A par-

A parson made a bond to resign upon request, and afterwards a lease to his patron of part of the glebe for *twenty-one years*. In an action brought upon this bond, the incumbent pleaded the statute 18 *Eliz.* and averred, that this bond was made to secure this lease, and to compel the incumbent to reside, and adjudged a good plea, and an apt averment.

A parson made a lease, and in the lease covenanted not to be absent by the space of *eighty days* in any one year, and gave bond for the performance, and after became non-resident for *eighty days*; and resolved, that the bonds and covenants were both void.

A parson made a lease, and covenanted neither to do or suffer to be done, any matter, whereby the lease should become void, and after became non-resident by the space of *eighty-days* in a year, and this was held a good covenant; and a covenant, that the parson should be resident, was held not to be against this law, by *Popham, Tanfield, and Clench*, against *Williams*.

Leases of Colleges and Hospitals.

It is to be observed, that they are not comprehended in the enabling stat. 32 *H. 8.* nor in any other statute, till the restrictive stat. 13 *Eliz.* whereby (amongst the rest) the masters and fellows of colleges, and the masters and guardians of hospitals, are disabled to make any grants or conveyances of any of their possessions, other than for *twenty-one years*, or *three lives*, from the making of such lease, and not from the day of the date, or from the date, as has been said: and this must be of lands usually demised, and the accustomed rent, or more, must be reserved, with all the other qualifications mentioned before.

There is a restriction upon colleges by the statute 18 *Eliz.* that upon all college leases, a *third part* of the ancient rent shall be reserved in *wheat and malt*, after the rate of *six shillings and eight-pence* a quarter wheat, and *five shillings* a quarter malt, to be delivered at the colleges; and in default of the delivery, to pay for the wheat and barley, after the rate the best wheat and malt shall be sold the next market day, before the rent should have been paid; and for default of such reservation, the lease to be void; and the markets that are to set the prices are,

are, *Oxford for Oxford. Cambridge for Cambridge. Windsor for Eaton. Winchester for Winchester.*

By statute 18 *Eliz.* they are restrained to make any concurrent leases till within *three years* of the end of the former terms that are in being.

As to what things are demisable within these several statutes, and what reservations are good, and in what cases the acceptance of rent by the successor will make a lease good, that was voidable within these laws, and the several qualifications mentioned before.

One *Small* being possessed of the *manor of Paddington*, by a lease from a bishop of a term of years; the bishop made a lease to another for three lives, and before livery the tenant surrendered his former term; and it was held, that the surrender was made in due time, and the second lease good.

A prebend made a new lease without excepting the crab-trees, as was done in the former lease, reserving the ancient rent, with other due circumstances; and this lease was held void against the successor, by reason of the adding of the crab-trees.

It hath been adjudged, that a bishop, dean, &c. cannot grant the next avoidance of an advowson, nor any rent-charge out of the possessions of the church; but the same is void within the restrictive acts before mentioned, though these cannot be said to be any of the possessions of their churches.

It hath been held, that where a bishop demised a rectory for lives, and covenanted to discharge, save harmless, and indemnify, the lessee, &c. from all pentions, procurations, subsidies, and from all other payments of any sum of money, demands and duties whatsoever, ordinary or extraordinary, which shall be due and issuing out of the premises; that this covenant would not bind the successor, unless it had been in the ancient leases.

Hale, Chief Justice, was of opinion, that such covenant, though it had been in former leases, should not bind the successor for the royal aid, or any new charge by act of parliament.

A bishop may grant an ancient office, with the ancient fee (if it be a necessary office, for the life of the officer); but the bishops cannot grant such office to two, or in reversion.

A bishop cannot grant an annuity *pro consilio impenso*

et

et impendendo, to bind his successor, though it be confirmed by the dean and chapter.

It hath been resolved, that a bishop of late erection may grant an office of necessity to one in possession for life, with a reasonable fee.*

Where offices have anciently been granted in reversion, they may still be granted in reversion, with confirmation.

If a bishop grant an ancient office with the ancient fee and more, and the grant be entire (as where the ancient fee was *five marks*, and the new, *five pounds*), it is void for all. But if it be several (as *five marks*, and pasturage for *two horses*), it is good for the ancient fee, and void for the other, *per Hutton and Yelverton, versus Crook and Harvey*.

If a copyhold escheator be forfeited, the bishop may grant it in fee by copy of court-roll, notwithstanding stat. 1 *Eliz*.

It was also resolved, that where an archdeacon made a lease for three lives, warranted by the statutes before-mentioned, and the lessee granted a rent-charge for an *hundred years*, which was confirmed by the bishop, dean and chapter; that notwithstanding the same was void against the successor within statute 13 *Eliz. cap. 10*.

If a writ of annuity should be brought against a parson, &c. pretending the same due by prescription; and although the parson pray in aid of the patron and ordinary, and upon a plea pleaded by them, the plaintiff obtains a verdict and judgment, and all this by practice and fraud to charge the glebe, it is void against the successor: for these statutes being made for the benefit of the church, the advancement of religion and hospitality, and to avoid dilapidations, shall always have a favourable construction.

It is regularly true, that where the wife, issue in tail, or successor, accepts the rent after the death of the husband, tenant in tail, or predecessor, upon a void lease made by the husband, tenant in tail, or predecessor, that such acceptance will not affirm the lease.

This rule must be understood of such a lease as is void *ipso facto*, without entry, or any other ceremony; and

* These grants must be all confirmed by the dean and chapter, because they are not good within the statute 32 Hen. 8.

therefore

therefore if a parson, vicar, or prebend, &c. make a lease not warrantable by the statutes for *twenty-one years*, rendering rent, and dies, here no acceptance of rent by the successor, &c. will affirm this lease, because the same was void without entry, or other ceremony.

If a parson, vicar, or prebend, make a lease not warrantable within the before-mentioned statutes, for life or lives, reserving rent, and die, and the successor before entry, accept the rent, this lease shall bind him for the time. For this being an estate of freehold, could not be a void entry.

If a bishop, abbot, or prior, which have the inheritance in fee-simple in them, make a lease for lives, or years, not warranted by the statutes before-mentioned, not being absolutely void by their deaths, but only voidable by the entry of the successor, if the successor accept the rent before entry, be it for lives or years, he affirms the lease for his life.

If a bishop make a lease not warranted by the statutes, rendering rent, and die, and his successor appoints his bailiff to collect his rents of that manor, who, amongst the rest, receives the rent reserved upon this demise, and accounts to the bishop's successor for it, this is a good acceptance, and shall bind the bishop for his time.

If a parson lease for life, not warranted nor confirmed, reserving rent, if his successor receive fealty of his tenant upon this lease, he has thereby affirmed the lease for his time: the like it will be if the successor bring an action of waste.

If a bishop make a lease of tythes, or other things not manurable for life or lives, rendering rent, and dies, and his successor accepts this rent, it will not affirm the lease.

Whether such acceptance upon a lease for years of tythes, &c. will bind the successor, seems yet a quære.

As to what Leases or Farms may or may not be taken.

By statute 21 *Hen. 8.* it is, amongst other things, enacted, "That no spiritual person shall in his own name, or in the name of any other, take to farm any manors, lands, tenements, or hereditaments, upon the penalty of ten pounds for every month that he holds the same ;
" nor

"nor by himself, nor any other, shall buy cattle, corn, lead, tin, hides, leather, tallow, fish, wool, wood, or any manner of victuals or merchandizes, to sell again for gain, upon pain to forfeit the treble value of things so bought."

It is further enacted by the same statute, "That no spiritual person beneficed with cure of souls, shall farm the parsonage or vicarage of another to take any rent or profit out of such farm, upon the penalty of *forty shillings a week, and ten times the value of the rent, or profit he shall take out of his farm.*"

It is further enacted by the same statute, "That no spiritual person shall have or keep by himself, or any other; any tan-house or brew-house, other than for his own family, upon pain to forfeit *ten pounds per annum.*"

All which penalties are given to the king and informer, to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law is to be admitted, &c.*

Stat. 5 Geo. 3.
cap. 17.

By statute 5 Geo. 3. cap. 17. a lease of tythes or other incorporeal hereditaments alone may be granted by any bishop, or any such ecclesiastical or eleemosynary corporation, and the successor shall be entitled to recover the rent by an action of debt, which (in case of a freehold lease) he would not have brought at the common law.

C H A P. VIII.

The Manner of paying Tythes, together with the Sums payable by the respective Parishes in London.

BY the several acts of the 27 H. 8. c. 20. 32 H. 8. c. 7. 2 & 3 Edw. 6. c. 13. and 7 & 8 W. c. 6. it is provided, that nothing therein shall extend to the city of *London* concerning any tythe, offering, or other ecclesiastical duty grown and due to be paid within the said city; because there is another order made for the payment of tythes and other duties there; which order is thus

* But see 43 Geo. 3. c. 84. which repeals the penalties for non-residence, &c. a copious abstract of which will be found in the Appendix.—E.

fol

set forth : It appears by the records of the city of *London*, that *Niger* Bishop of *London*, in 13 *Hen. 3.* made a constitution in confirmation of an ancient custom formerly used time out of mind, that provisions should be made for the ministers of *London* in this manner, that is to say, that he who paid the rent of *twenty shillings* for his house wherein he dwelt, should offer every *Sunday* and every *Apostle's day* whereof the evening was fasted, *one half-penny*, and he that paid but *ten shillings* rent yearly should offer but *one farthing*; all which amounted to the proportion of *two shillings and six-pence in the pound*, for there were *fifty-two Sundays*, and *eight Apostles days*, the vigils of which were fasted. And if it chanced that one of the *Apostles days* fell upon a *Sunday*, then there was but *one half-penny* or *farthing* paid; so that sometimes it fell out to be somewhat *less than two shillings and six-pence* in the pound. And it appears by the *book cases* in the reign of *Edward the Third*, that the provision made for the ministers of *London* was by offerings and obventions; albeit the particulars are not assigned there, but must be understood according to the former ordinance made by *Niger*; and the payment of *two shillings and six-pence in the pound*, continuing until the 13 *Rich. 2.* *Arundel*, Archbishop of *Canterbury*, made an explanation of *Niger's* constitution, and thrust upon the citizens of *London* *two, and twenty* more *Saint days* than were intended by the constitution made by *Niger*; whereby the offerings now amounted to the sum of *three shillings and five-pence* in the pound. And there being some reluctance by the citizens of *London*, *Pope Innocent*, in 5 *H. 4.* granted his bull, whereby *Arundel's* explanation was confirmed; which confirmation (notwithstanding the difference between the ministers and citizens of *London*, about these *two-and-twenty Saint days* which were added to their number) *Pope Nicholas* also by his bull did confirm in 31 *Hen. 6.* against which the citizens of *London* did contend with so high a hand, that they caused a record to be made, whereby it might appear in future ages, that the order of explanation made by the Archbishop of *Canterbury* was done without calling the citizens of *London* unto it, or any consent given by them. And it was branded by them as an order surreptitiously and abruptly obtained, and therefore more fit to have the name of a destructive than a declaratory order. But notwithstanding this contention, the payment seems to have

H

been

been most usually made according to the rate of *three shillings and five-pence in the pound*. For *Lynwood*, who wrote in the time of *Hen. 6.* in his *Provincial Constitutions*, debating the question, whether the merchants and artificers of the city of *London* ought to pay any tythes, shews that the citizens of *London*, by an ancient ordinance observed in the said city, are bound every Lord's day, and every principal feast-day, either of the Apostles or others, whose vigils are fasted, to pay *one farthing* for every *ten shillings* rent that they paid for their houses wherein they dwelt.

In 36 *Hen. 6.* there was a composition made between the citizens of *London* and the ministers, that a payment should be made by the citizens according to the rate of *three shillings and five-pence in the pound*; and if any house were kept in the proper hand of the owner, or were demised without reservation of any rent, then the churchwardens of the parish where the houses were, should set down a rate of the houses, and according to that rate payment should be made. After which composition so made, there was an act of common council made in 14 *Edu. 4.* in *London*, for the confirmation of the bull granted by Pope *Nicholas*. But the citizens of *London* finding, that by the common laws of the realm, no bull of the pope, nor arbitrary composition, nor act of common council, could bind them in such things as concerned their inheritance; they still wrestled with the clergy, and would not condescend to the payment of the said *eleven-pence* by the year, obtruded upon them by the addition of the *two-and-twenty Saint days*; whereupon there was submission to the Lord Chancellor, and divers others of the Privy Council, in the time of King *Hen. 8.* and they made an order for the payment of tythes according to the rate of *two shillings and nine-pence in the pound*; which order was first promulgated by a proclamation made, and afterwards established by an act of parliament made in 27 *Hen. 8. c. 21* intitled, "An act for the payment of tythes within the city and suburbs of *London*, until another law and order shall be made and published for the same."

Ten years after this, another law and order was made by the statute of 37 *Hen. 8. c. 12.* (intitled, "An act for tythes in *London*") as follows: "Whereas of late
" time

" time contention, strife, and variance, hath arisen and
 " grown, within the city of *London* and the liberties of
 " the same, between the parsons, vicars, and curates of
 " the said city, and the citizens and inhabitants of the same,
 " for and concerning the payment of tythes, oblations,
 " and other duties within the said city and liberties: for
 " appeasing whereof, a certain order and decree was made
 " thereof by the most Reverend Father in God, Thomas
 " Archbishop of Canterbury, Thomas Audley, Knight,
 " Lord Audley, of Walden, and then Lord Chancellor
 " of England, now deceased, and other of the King's
 " most Honourable Privy Council; and also the King's
 " letters patent, and proclamation was made thereof, and
 " directed to the said citizens concerning the same; where-
 " upon it was after enacted in the parliament holden at
 " *Westminster* by prorogation the fourth day of *February*,
 " in the twenty-seventh year of the King's most noble
 " reign, that the citizens and inhabitants of the same city
 " should, at *Easter* then next following, pay unto the
 " curates of the said city and suburbs, all such and like
 " sums of money for tythes, oblations, and other duties,
 " as the said citizens and inhabitants, by the order of the
 " said late Lord Chancellor, and other the King's most
 " Honourable Council, and the King's said proclamation,
 " paid, or ought to have paid, by force and virtue
 " of the said order at *Easter* in the year 1535: and the
 " same payments so to continue from time to time, un-
 " til such time as any other order or law should be made
 " by the King, and the two-and-thirty persons by the
 " King to be named, as well for the full establishment
 " concerning the payment of all tythes, oblations, and
 " other duties of the inhabitants within the said city,
 " suburbs, and liberties of the same, as for the making of
 " other ecclesiastical laws of this realm of *England*; and
 " that every person denying to pay as is aforesaid, should,
 " by the commandment of the Mayor of *London* for the
 " time being, be committed to prison, there to remain
 " until such time as he should have agreed with the curate
 " for his said tythes, oblations, and other duties, as is
 " aforesaid, as in the said act more plainly appeareth;
 " since which act divers variances, contentions, and strifes,
 " are newly risen and grown between the said parsons,
 " vicars, and curates, and the said citizens and inhabitants,
 " touch-

" touching the payment of the tythes, oblations, and
 " other duties, by reason of certain words and terms
 " specified in the said order, which are not so plainly and
 " fully set forth as is thought convenient and meet to be ;
 " for appeasing whereof, as well the said parsons, vicars,
 " and curates, as the said citizens and inhabitants have
 " compromised, and put themselves to stand to such
 " order and decree touching the premises as shall be made
 " by the said Right Reverend Father in God, and the
 " several other persons here under-mentioned, for a final
 " end and conclusion to be had and made touching the
 " premises for ever ; and to the intent to have a full peace
 " and perfect end between the said parties, his heirs and
 " successors, touching the said tythes, oblations, and other
 " duties, for ever, it is enacted, That such end, order,
 " and direction, as shall be made by the fore-named
 " archbishop and the several other persons as aforesaid,
 " or any six of them, before the first day of *March* next
 " ensuing, concerning the payment of tythes, oblations,
 " and other duties within the said city and liberties there-
 " of, and inrolled of record in the High Court of Chan-
 " cery, shall stand, remain, and be as an act of parlia-
 " ment, and shall bind as well all citizens and inhabitants
 " of the said city and liberties, for the time being, as the
 " said parsons, vicars, curates, and their successors for ever,
 " according to the effect, purport and intent of the said
 " order and decree so to be made and inrolled ; and that
 " every person denying to pay any of his tythes, oblations,
 " or other duties, contrary to the said decree so to be made,
 " shall, by the commandment of the Mayor of *London*
 " for the time being, and in his default or negligence, by the
 " Lord Chancellor of *England* for the time being, be
 " committed to prison, there to remain till such time as
 " he hath agreed with the curate for the same."

Which decree made in pursuance hereof, is as follows,
 viz. " As touching the payment of tythes in the city of
 " *London*, and the liberties of the same, it is fully ordered
 " and decreed by the most Reverend Father in God,
 " Thomas, Archbishop of Canterbury, primate and me-
 " tropolitan of England, Thomas Lord Wryothefly, Lord
 " Chancellor of England, William Lord St. John, presi-
 " dent of his Majesty's council, and lord' great master of
 " his Majesty's household, John Lord Russel, lord privy
 " seal,

“ seal, Edward Earl of Hertford, lord great chamberlain
 “ of England, John Viscount Lisle, high admiral of Eng-
 “ land, Richard Lister, Knight, chief justice of England,
 “ and Roger Cholmly, Knight, chief baron of his Ma-
 “ jesty’s Exchequer, this twenty-fourth day of *February*,
 “ in the year of our Lord, 1545, according to the statute
 “ in such case lately provided, that the citizens and inha-
 “ bitants of the said city and liberties thereof for the time
 “ being, shall yearly, without fraud or covin, for ever
 “ pay their tythes to the parsons, vicars, and curates of
 “ the said city, and their successors for the time being,
 “ after the rate hereafter following ; that is to wit, of
 “ every *ten shillings* rent by the year, of all houses, shops,
 “ warehouses, cellars, stables, and every of them, with-
 “ in the said city and liberty thereof, *sixteen-pence half-*
 “ *penny*, and of every *twenty shillings* rent by the year *two*
 “ *shillings and nine-pence*, and so above the rent of *twenty*
 “ *shillings* by the year, as ending from *ten shillings* to *ten*
 “ *shillings*, according to the rate aforesaid.”

Item, “ That where any lease is or shall be made of
 “ any dwelling house or houses, shops, warehouses, cel-
 “ lars, or stables, or any of them, by fraud or covin,
 “ reserving less rent than hath been accustomed, or is, or
 “ where any such lease shall be made without any rent
 “ reserved upon the same by reason of any fine or income
 “ paid before hand, or by any other fraud or covin ; in
 “ every such case the tenant or farmer shall pay for his
 “ tythes of the same after the rate aforesaid, according to
 “ the quality of such rents as the same were last letten for,
 “ without fraud or covin, before the making of such
 “ lease.”

Item, “ That every owner or inheritor of any dwell-
 “ ing-house or houses, shops, warehouses, cellars, or sta-
 “ bles, inhabiting or occupying the same himself, shall
 “ pay after such rate, according to the quantity of such
 “ yearly rent as the same was last letten for, without
 “ fraud or covin.”

Item, “ If any person hath taken, or hereafter shall
 “ take, any mease or mansion-place by lease, and the
 “ taker thereof, his executor or assigns, doth, or shall
 “ inhabit in any part thereof, and hath within eight years
 “ last past before this order, or hereafter shall let out the
 “ residue of the same ; in such case the principal farmer or

“ farmers, or first taker or takers thereof, their executors
 “ or assigns, shall pay their tythes after the rate aforesaid,
 “ according to the quantity of their rent by the year.”

“ And if any person shall take divers mansion-houses,
 “ shops, warehouses, cellars, or stables, in one lease, and
 “ shall let out one or more of them, and shall keep one
 “ or more in his own hands, and inhabit in the same,
 “ the said taker and his executors or assigns shall pay
 “ their tythes after the rate abovesaid, according to the
 “ quantity of the yearly rent of such mansion-house or
 “ houses retained in his own hands; and his assignees
 “ of the residue of the said mansion-house or house shall
 “ pay their tythes after the rate abovesaid, according to
 “ the quantity of their yearly rents.”

Item, “ If such farmer or farmers, or his or their assigns
 “ of any mansion-house or houses, warehouses, shops,
 “ cellars, or stables, hath at any time within eight years
 “ last past, or shall hereafter let over all the said mansion-
 “ house or houses contained in his or their lease to one or
 “ more persons, the inhabitants, lessees, or occupiers
 “ thereof, shall pay their tythes after the rate of such
 “ rents as the inhabitants, lessees, or occupiers, and their
 “ assigns, have been, or shall be charged withal, without
 “ fraud or covin.”

Item, “ If any dwelling-house within eight years last
 “ past, was, or hereafter shall be, converted into a ware-
 “ house, storehouse, or such like; or if a warehouse,
 “ storehouse, or such like, within the said eight years,
 “ was, or hereafter shall be, converted into a dwelling-
 “ house, the occupier thereof shall pay tythes for the
 “ same after the rate above declared of mansion-house
 “ rents.”

Item, “ That where any person shall demise any dye-
 “ house or brewhouse, with implements convenient or ne-
 “ cessary for dying or brewing, reserving a rent upon the
 “ same, as well in respect of such implements as in re-
 “ spect of such dyehouse or brewhouse, the tenant shall
 “ pay his tythes after such rate as is abovesaid, the third
 “ penny abated : and every principal house or houses, with
 “ key or wharf, having any crane or gibbet belonging to
 “ the same, shall pay after the like rate of their rents as is
 “ abovesaid, the third penny abated ; and other wharfs
 “ belonging

“ belonging to houses having no crane or gibbet, shall
“ pay for tythes as shall be paid for mansion-houses in form
“ aforesaid.”

Item, “ That where any mansion-house, with a shop,
“ stable, ware-house, wharf with crane, timber-yard,
“ teinter-yard, or garden belonging to the same, or as a
“ parcel of the same, is or shall be occupied together, if
“ the same be hereafter severed or divided, or at any time
“ within eight years last past were severed or divided ;
“ then the farmers or occupiers thereof shall pay such
“ tythes as is aforesaid, for such shops, stables, ware-
“ houses, wharf with crane, timber-yard, teinter-yard, or
“ garden aforesaid, so severed or divided, after the rate of
“ their several rents thereupon reserved.”

Item, “ That the said citizens and inhabitants shall pay
“ their tythes quarterly ; that is to say, at the Feast of
“ *Easter*, the Nativity of *St. John Baptist*, the Feast of
“ *St. Michael the Archangel*, and the Nativity of our Lord,
“ by even portions.”

Item, “ That every householder paying 10s. rent, or
“ above, shall for him or herself be discharged of their
“ four offering-days ; but his wife, children, servants, or
“ other of their family taking their rights of the church
“ at *Easter*, shall pay 2s. for their four offering-days
“ yearly.

“ PROVIDED ALWAYS, and it is decreed, that if any
“ house, which hath been or hereafter shall be letten for
“ *ten shillings* rent by the year, or more, be or hath been at
“ any time within *eight years* last past, or hereafter shall
“ be divided and leased into small parcels or members,
“ yielding less yearly rent than *ten shillings* by the year ;
“ the owner, if he shall dwell in any part of such house,
“ or else the principal lessee (if the owner do not dwell
“ in some part of the same) shall pay for the tythes after
“ such rate of rent as the same house was accustomed to
“ be letten for before such division or dividing into parts or
“ members, and the under-farmers and lessees to be dis-
“ charged of all tythes for such small parcels, parts, or
“ members, rented at less yearly rent than *ten shillings* by
“ the year, without fraud or covin, paying *two-pence a-*
“ *piece* yearly for *four offering-days*.

H 4

“ PROVIDED

“ PROVIDED ALWAYS, and it is decreed, That for such
 “ gardens as appertain not to any mansion-house, and
 “ which any person holdeth in his hands for pleasure, or
 “ to his own use; the person holding the same shall pay
 “ no tythes for the same; but if any person which shall
 “ hold any such garden, containing half an acre or more,
 “ shall make any yearly profit thereof by way of sale, he
 “ shall pay tythes for the same after such rate of his rent
 “ as is herein first above specified.”

“ PROVIDED ALSO, That if any such gardens, now
 “ being of the quantity of half an acre or more, be
 “ hereafter by fraud or covin divided into less quantities,
 “ then to pay according to the rate above-said.”

“ PROVIDED ALWAYS, That this decree shall not ex-
 “ tend to the houses of great men or noblemen, or noble-
 “ women, kept in their own hands, and not letten for
 “ any rent, which in times past have paid no tythes, so
 “ long as they shall so continue unletten; nor to any halls
 “ of crafts or companies, so long as they be kept unletten,
 “ so that the same halls in time past have not used to pay
 “ any tythes.”

“ PROVIDED ALWAYS, and it is decreed, That this
 “ present order and decree shall not in any wise extend
 “ to bind or charge any sheds, stables, cellars, timber-
 “ yards, nor teinter-yards, which were never parcel of any
 “ dwelling-house, nor belonging to any dwelling-house,
 “ nor have been accustomed to pay any tythes; but that
 “ the said citizens and inhabitants shall thereof be quit of
 “ payment of any tythes, as it hath been used and accus-
 “ tomed.”

“ PROVIDED ALSO, and it is decreed, That where
 “ less sum than after sixteen-pence half-penny in the *ten*
 “ *shillings* rent, or less than *two shillings and nine-pence* in
 “ the *twenty shillings* rent, hath been accustomed to be
 “ paid for tythes; in such places the said citizens and
 “ inhabitants shall pay but only after such rate as hath been
 “ accustomed.”

Item, “ It is also decreed, That if any variance, con-
 “ troversy or strife shall arise in the said city for non-pay-
 “ ment of any tythes; or if any variance or doubt shall
 “ arise upon the true knowledge or division of any rent or
 “ tythes within the liberties of the said city, or of any ex-
 “ tent of assessment thereof; or if any doubt arise upon any
 “ other

“ other thing contained within this decree, then upon complaint made by the party grieved to the mayor of the city of *London* for the time being, the said mayor, by the advice of counsel, shall call the parties before him, and make a final end in the same, with costs to be awarded by the discretion of the said mayor and his assistants, according to the intent and purport of this present decree.”

“ And if the mayor shall not make an end thereof within *two months* after complaint to him made ; or if any of the said parties find themselves aggrieved, the Lord Chancellor of *England* for the time being, upon complaint to him made, within *three months* then next following, shall make an end in the same, with such costs to be awarded as shall be thought convenient, according to the intent and purport of the said decree.”

“ PROVIDED ALWAYS, That if any person take any tenement for a less rent than it was accustomed to be letten for, by reason of great ruin or decay, burning, or such like occasions or misfortunes ; such persons, his executors or assigns, shall pay tythes only after the rate of the rent reserved in his lease, and none otherwise, as long as the same lease shall endure.”

[*Of every ten shillings rent by the year.*] See *sect. 2.* of *Gibf. Cod. 1221* the foregoing decree. It was resolved in the case of *Meadhouse* against *Taylor*, that a rent for half a year, and afterwards for another half year, is a yearly rent, or a rent by the year within the meaning of the decree. Noy, 130.

[*Of all houses.*] In the case of *Green v. Piper, East. 34* *Cro. Eliz. 276*; *Eliz.* it was suggested, in order to hinder the granting of a consultation, that the house belonged to a priory which was discharged of tythes by bull. But the court replied, that by the *common law* houses paid no tythes ; and the right in the present case subsisting immediately on this statute, which lays them upon every house ; no exemption shall be allowed but to such houses as are specially exempted by the statute itself. Mo. 912.
Gibf. Cod. 1221

[*By reason of any fine or income paid beforehand, or by any other fraud or covin.*] See *sect. 3.* of the said decree, *M. 5 Jac.* between *Skidmore* and *Eire*, plaintiffs, in the prohibition against *Bell*, parson of *St. Michael, Queenhithe*, in *London*. The case was this : the said parson libelled before the Chancellor of *London* for the tythes of an house called

called the *Boar's Head* in *Bread-street*, in the said parish, the ancient farm-rent whereof was *five pounds* at the time of the said decree and after; and that of late a new lease was made of the said house, rendering the rent of *five pounds* a year, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the same day; that the rent was paid as a sum in gross, and that so much rent might have been reserved for the said house as the rent reserved and the sum in gross amounted unto: which reservation and covenant were made to defraud the said parson of the tythes of the true rent of the said house, which to him did appertain by the purport and true intention of the said decree; and in this case four points were resolved by the court: 1. If so much rent be reserved, as was accustomed to be paid at the making of the said decree (whatsoever fine or income be paid); that the parson can aver no covin; for the words of the decree be, "Where any lease is or shall be made of any dwelling-house by fraud or covin in reserving less rent than hath been accustomed:" so as if the accustomed rent be reserved, no fraud can be alleged; for the fraud by the decree is, when lesser rent than was then accustomed to be paid is reserved, or if no rent at all be reserved; for then tythe shall be paid according to the rent that then was last before reserved to be paid, so as the decree consisteth upon four points; first, where the accustomed rent was reserved; secondly, where the rent was increased, then the tythes should be paid according to the whole rent; thirdly, where lesser rent was reserved; and fourthly, where no rent was reserved, but had been formerly reserved. And this act and decree were very beneficial for the clergy of *London*, in respect of that which they had before. And the defendant in his libel confesseth that the accustomed rent was reserved; and therefore no cause of suit. 2. It was resolved, That as to such houses as were never letten to farm, but inhabited by the owner, this is *casus omisus*, and shall pay no tythes by force of the decree. 3. It was resolved, that where the decree saith, "Where no rent is reserved by reason of any fine or income paid before-hand:" albeit no fine or income be paid in that case, yet if no rent be reserved, the parson shall have his tythes according to the decree: for that is put but for an example or cause why no rent is reserved; and whether any fine
or

or income were paid or no, is not material as to the parson. 4 It was resolved, That the parson could not sue for the said tythes in the *ecclesiastical* court; for that the act and decree that raised and gave these kind of tythes did limit and appoint how and before whom the same should be sued for, and did appoint new and special judges to hear and determine the same; and in the end it was awarded that the prohibition should stand.

[Upon complaint made.] See *sect.* 19. of the foregoing decree. In the aforefaid case of *Meadhouse v. Taylor*, it was held by the court that the complaint ought to be in writing (and not by word of mouth only), in nature of a *monstrans de droit*, declaring all the title. Noy, 130. Gibf. Cod. 1223

[To the mayor.] Pursuant to the aforefaid case of *Skidmore v. Eire*, diverse prohibitions have been granted (when tythes were sued for upon this statute) to the *ecclesiastical* court. But when it was pleaded in the year 1658, that the right of tythes, upon the foundation of this act could not be cognizable in the *Exchequer*, by reason of the provision therein made for determining of all controversies before the lord mayor or lord chancellor; it was held clearly by the barons, that the court of *Exchequer* had jurisdiction in the cause, because the act had no negative words in it. Upon which I shall only observe, says Dr. Gibfon, that if affirmative words will not exclude the temporal court, it may be hard to find a good reason why, according to the foregoing judgments, they should exclude the spiritual court. Gibf. 1223d

On a bill for a tythe of houses not within the city of *London*, and so not within statute 37 *Hen.* 8. It was admitted by the plaintiff, that this demand was against common right, and he did not allege this payment to be either by custom or prescription, but that this was the only provision for *St. Saviour's, Southwark*, in right of which church the plaintiff claimed: it was proved that the houses in the parish had, since the year 1653, generally paid *twelve shillings per annum*; but no proof that the defendant's house had paid for *twenty-five years*, but by one single witness; yet the court decreed an account without directing an issue. Bunb. Repitoe. Hil. 1721.

On a bill by the vicar of *Cripplegate* for *two shillings and nine-pence per pound*, according to the rent of the houses, pursuant to the decree and statute 27 *Hen.* 8. and
to

to support the jurisdiction of this court (the statute giving power to the lord mayor of *London* to determine, &c.), the following cases were cited, *Hard.* 116. 2 *Inst.* 660. *Lit. Rep.* 102. 141. *Degge* 351. *Watson* 387. *Cro. Car.* 596. *Hob.* 11. Several instances were given, where the *two shillings and nine-pence per pound* had been decreed, as the case of *St. Bride's, Townley v. Wilson, Mich. 1705*; *Sawyer v. Montford*, 1694; *Grant v. Cannon, Mich. 5 W. & M. Sheffield v. Scrjeant*, 1658; *St. Swithin's, Humfierville v. Plumsted*; *Aldgate parish*, 21 *Car.* the difficulty was, that here appeared to have been paid from time to time several payments, as *ten shillings* for *T's* house, *six shillings* for *Borkett's*, and *four shillings* for *Whicett's*, and the charges in the vicar's books appeared to be the same, though in some of them the payments sometimes varied, and the right of the vicar cannot be destroyed but by an uniform constant payment. (See the statute.) This being a thing of great consequence, the court took time to consider of this decree.

Bunb. 106, 107.
Pasch. 1721.
Dr. Bennett,
v. Treppas and
others.

In *Michaelmas* term, 1722, the court gave judgment: *Baron Price* held, that there ought to be a general decree for the plaintiff; *Mountague, Page, and Gilbert*, directed an issue to try whether there had been such customary payments as was set up by defendants; and a verdict was for the defendants. From this decree *Bennett* appealed, and the decree was confirmed.

Bunb. 143.

An issue was directed in this cause, to try whether there had been any variation in the payment of tythes, or sums of money in lieu of them, for houses in *London*, according to statute 37 *Hen.* 8. It was now moved, that the plaintiff should produce at the trial the books of the former rectors; and although it was objected that these were properly private books, and the plaintiff's own evidence, yet as they had before been produced at the hearing of the cause, and as the issue to be tried is to inform the conscience of the court, the jury ought to have all the lights the court can give them: *Per curiam*, the plaintiff was ordered to produce these books at the trial.

After all, notwithstanding the settlement by the afore-said decree, divers prescriptions for the payment of lesser rates than the parsons might require by the said settlement, (as to pay *ten shillings* for the tythe of an house, although the rent thereof was *forty pounds* a year or more) have been

been gained and allowed. But upon the occasion of the fire of London in the year 1666, as to the churches and houses thereby consumed, another statute was made, namely stat. 22 & 23 C. 2. c. 15. (intituled, *An act for the better settlement of the maintenance of the parsons, vicars, and curates, in the parishes of the city of London*) which is as follows: "Whereas the tythes in the city of London were levied and paid with great inequality, and are, since the late dreadful fire there, in the rebuilding of the same, by taking away some houses, altering the foundation of many, and the new erecting of others, so disordered, that in case they should not for the time to come be reduced to a certainty, many controversies and suits of law might thence arise; it is therefore enacted, that the actual certain tythes of the parishes within the said city and liberties thereof, whose churches have been demolished, or in part consumed in the late fire; and which said parishes, by virtue of an act of this present parliament, remain and continue single, as heretofore they were, or are by the said act annexed or united into one parish respectively, shall be as follows that is to say, the annual certain tythes, or sum of money in lieu of tythes;" of

	£.	s.	List of parishes
The parish of Alhallows, Lombard-street	110	0	as regulated, under Stat. 22 and 23 Car. 2. as to tythes.
St. Bartholomew, Exchange	100	0	
St. Bridget, alias Brides	120	0	
St. Bennet Finck	100	0	
St. Michael, Crooked-lane	100	0	
St. Christopher	120	0	
St. Dionis Backchurch	120	0	
St. Dunstan in the East	200	0	
St. James, Garlick-hythe	100	0	
St. Michael, Cornhill	140	0	
St. Michael, Bassishaw	132	11	
St. Margaret, Lothbury	100	0	
St. Mary, Aldermanbury	150	0	
St. Martin, Ludgate	160	0	
St. Peter, Cornhill	110	0	
St. Stephen, Coleman-street	110	0	
St. Sepulchre	200	0	
St. Alhallows, Bread-street, and St. John Evangelist	140	0	
Alhallows the Great and Alhallows the Less	200	0	
			St.

St. Alban, Wood street, and St. Olives, Silver- street	£. s.
- - - - -	170 0
St. Anne and Agnes, and St. John Zachary	140 0
St. Augustine, and St. Faith	172 0
St. Andrew Wardrobe, and St. Anne, Black- friars	140 0
St. Antholin, and St. John Baptift	120 0
St. Bennet, Grace-church, and St. Leonard, East-cheap	140 0
St. Bennet, Paul's wharf, and St. Peter's, Paul's wharf	100 0
Christ-church, and St. Leonard, Foster-lane	200 0
St. Edmund the King, and St. Nicholas Acons	180 0
St. George, Botolph-lane, and St. Botolph, Bil- lingsgate	180 0
Lawrence Jury, and St. Magdalen, Milk- street	120 0
St. Magnus, and St. Margaret, New Fish- street	170 0
St. Michael Royal, and St. Martin, Vintry	140 0
St. Matthew, Friday-street, and St. Peter Cheap	150 0
St. Margaret Pattons, and St. Gabriel Fenchurch	120 0
St. Mary at Hill, and St. Andrew Hubbard	200 0
St. Mary Woolnoth, and St. Mary Wool- church	160 0
St. Clement Eastcheap, and St. Martin Orgars	140 0
St. Mary Ab-church, and St. Lawrence Pount- ney	120 0
St. Mary Aldermary, and St. Thomas Apostle	150 0
St. Mary le Bow, St. Pancras, Soper-lane, and Alhallows, Honey-lane	200 0
St. Mildred Poultry, and St. Mary Colechurch	170 0
St. Michael Wood street, and St. Mary Staining	100 0
St. Mildred, Bread-street, and St. Margaret Moses	130 0
St. Michael, Queenhithe, and Trinity	160 0
St. Magdalen, Old Fish street, and St. Gregory	120 0
St. Mary Somerset, and St. Mary Mounthaw	110 0
St. Nicholas, Cole-abbey, and St. Nicholas, Olaves	130 0
St. Olave, Jewry, and St. Martin, Ironmonger- lane	120 0
	St.

St. Stephen, Walbrook, and St. Bennet, Sheer-	100	0
hog		
St. Swythyn, and St. Mary Bothaw	140	0
St. Vedast <i>alias</i> Foster's, and St. Michael Quern	160	0

Which respective sums of money to be paid in lieu of tythes within the said respective parishes, and assessed as herein after is directed, shall be the respective certain actual annual maintenance (over and above glebes and perquisites, gifts and bequests, to the respective parson, vicar, and curate of any parish for the time being, or to their successors respectively, or to others for their use) of the said respective parsons, vicars, and curates, who shall be legally instituted, inducted, and admitted into the respective parishes aforesaid. *f. 3.*

And for the more equal levying of the same upon the several houses, buildings, and other hereditaments within the respective parishes, assessments were ordered to be made before *July 24, 1671*, upon all houses, shops, warehouses, and cellars, wharfs, keys, cranes, water-houses, tofts of ground (remaining unbuilt) and all other hereditaments whatsoever (except parsonage and vicarage houses) the whole respective sum by this act appointed, or so much of it as is more than what each impropiator is by this act enjoined to allow. *f. 4, 5, 6, 7.*

And three transcripts of the assessments were to be made; one to be deposited amongst the records of the city, another in the registry of the bishop of *London*, and another in the parish vestry respectively, for a perpetual memorial thereof. *f. 8.*

The sums assessed to be paid to the respective parsons, vicars, and curates, *at the four most usual feasts*, to wit, at the Annunciation of the Blessed Virgin, the Nativity of *St. John Baptist*, the Feast of *St. Michael the Archangel*, and the Nativity of our Blessed Saviour, *or within fourteen days* after each of the feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time as the incumbent shall begin to officiate or preach as incumbent. *f. 9.*

Impropiators shall pay what *bona fide* they have used and ought to pay to the respective incumbents at any time before the said late fire; the same to be computed as part of the maintenance of such incumbent. *f. 10.*

And

And if any inhabitant shall refuse or neglect to pay the incumbent the sum appointed by him to be paid (the same being lawfully demanded upon the premises), it shall be lawful for the lord-mayor, upon oath to be made before him of such refusal or neglect, to grant warrants for the officer or person appointed to collect the same, with the assistance of a constable, in the day-time, to levy the same by distress and sale of the goods of the party so refusing or neglecting; restoring to the owner the overplus over and above the said arrears, and the reasonable charges of making such distress. *f. 11.*

And if the lord-mayor shall refuse or neglect to execute any of the powers to him given by this act; it shall be lawful for the lord-chancellor or lord-keeper, or two of more of the barons of the Exchequer, by warrant under their hands and seals respectively, to do and perform what the said lord-mayor might or ought to have done in the premises. *f. 12.*

Provided that no court or judge, ecclesiastical or temporal, shall hold plea of or for any the sum or sums of money due and owing, or to be paid by virtue of this act; other than the persons hereby authorized to have cognizance thereof: nor shall it be lawful to, or for any parson, vicar, curate, or incumbent, to convene or sue any person assessed as aforesaid, and refusing or neglecting to pay the same, in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act for the hearing and determining of the same, in manner aforesaid. *f. 14.*

PROVIDED ALSO, That it shall be lawful for the warden and minor canons of *St. Paul's*, parsons and proprietors of the rectory of the parish of *St. Gregory* aforesaid, to receive and enjoy all tythes, oblations, and duties, arising or growing due within the said parish, in as large and beneficial manner as formerly they have or lawfully might have done. *f. 15.*

Shaw's Par. L.
45.

And for the better recovering the sums of money which shall be due according to the directions of this act, and for the levying of arrears where the occupier removes from the premises, or the houses have stood empty, a decree was made in the year 1713, by *Harcourt*, chancellor, assisted by the barons *Bury* and *Price*, in the case of *Savage v. Wood*, clerks, against *Harding and others*.

The

The statutes concerning building fifty new churches in or near London and Westminster, and providing for the ministers thereof, are as follow:—

Stat. 9 Ann. cap. 22. sect. 2. The money arising by Stat. 9 Ann. the duty on coals imported into the Thames, of two cap. 22. sect. 2. shillings per chaldron from 14th May 1716, and three shillings till 28th Sept. 1724, is to be paid into the Exchequer, and appropriated for building fifty new churches, of stone and other materials, with towers or steeples to each, and for purchasing sites of churches and churchyards, and burying-places, in or near London and Westminster, and for making such chapels, as are capable thereof, parish churches; and for purchasing houses for ministers, and for applying 4000*l.* per ann. out of the said duties, towards repairing the collegiate church of St. Peter, Westminster, and 6000*l.* per ann. towards the finishing Greenwich Hospital.

There shall be fifty churches built, whereof one shall be in the parish of Greenwich. *f. 3.*

Chapels already built, if fit, may be converted into parish churches. *f. 4.*

The queen, by letters patent, may nominate commissioners, who shall inform themselves in what parishes the new churches are most necessary to be built, and of proper places to build them, and of church-yards and burying-places to be bought; and shall limit the distinct parishes, &c. *f. 5.*

Stat. 10 Ann. c. 11. sect. 1. The commissioners for Stat. 10 Ann. cap. 11. sect. 1. fifty new churches, or any five of them, are required to meet as often as they shall have occasion, for building fifty new churches.

The commissioners may purchase lands, &c. as they shall think proper for the said new churches, and for church-yards, and for ministers' houses. *f. 2.*

The lands so purchased shall be conveyed to five or more of the commissioners and their heirs, and they are to cause the churches to be built, and chapels already built to be made parish-churches, and to provide houses for ministers; and church-yards to be made and inclosed. *f. 3.*

They may provide more than one cemetery for any new parish-church, and without the bounds of the parish; and the ground purchased for that purpose shall be taken

as part of the parish, after the purchase and consecration thereof, and shall be discharged from any rates to the other parish out of which it was taken. *f. 4.*

The treasury may issue, out of the money arising by virtue of this or the former act 9 *Anne*, c. 22. such sums as five of the commissioners shall think necessary for purchasing lands, &c. which money shall be paid to such person as the crown shall appoint treasurer thereof, not being a commissioner; and shall be accounted for by such treasurer, and disbursed according to such orders as he shall receive from the commissioners for the said uses; such treasurer to be accountable to the Exchequer, and to give security approved of by the treasury. *f. 7.*

The commissioners may, by a parchment writing inrolled in *Chancery*, ascertain the bounds of the site of each new church, and minister's house and church-yard, and also the district of each parish for every new church; and after the inrolment of such writing and consecration of the church, such district shall be a distinct parish, except touching rates, relief for the poor, and rates for the highways. *f. 8.*

The commissioners may, by writing inrolled in *Chancery*, take a part of any of the large parishes in and about *London* and *Westminster*, where any new church shall be made, and unite the same to any other lesser parish next adjoining, wherein a church is already built. *f. 9.*

There shall be a rector in every new church, and where there is a morning preacher in any chapel which shall be converted into a parish-church, such preacher shall, after the consecration, be the first rector, without any admission, institution, or induction; and in every new church, the first rector shall be appointed by the queen; and he and his successors are incorporated, and shall be called the rector of such new church, by the name that shall be given to it in the act of consecration; and the freehold of the new church, &c. shall be in him and his successors; and he and they may purchase lands, not exceeding the yearly value of 200*l.* for each church. *f. 10.*

The commissioners may enquire of the right of patronage, &c. of any church from which any part shall be taken as aforesaid, and treat with the person who hath the

the right, for the dividing such parish, and the tythes and dues thereunto belonging, to take effect after the first voidance, and for settling the right of patronage of each new church. *f. 11.*

Such settlement shall bind infants, &c. *f. 12.*

Until such settlement can be made of the right of patronage in every new parish, the crown shall present upon any avoidance. *f. 14.*

The rectors of every new church (except the present preacher in a chapel) shall be presented, instituted, collated, and inducted, as other rectors are; and they and the churchwardens shall be subject to the ordinary. *f. 15.*

This act shall not deprive the successors of the rectors or vicars of the parish-churches, out of which any part shall be taken, of any tythes, or other profits, until such agreement for dividing the parish be made and inrolled. *f. 16.*

This act shall not prejudice any proprietor of a chapel made a parish-church, or his interest in any pews, without his consent under hand and seal. *f. 17.*

If any proprietor shall sell his interest in a pew in any chapel, it shall be sold only to an inhabitant of the parish. *f. 18.*

The first church-wardens, overseers of the poor, and surveyors, and other parish officers, of every new parish, shall be elected by the commissioners, out of the inhabitants, within a month after the consecration of the church; and all succeeding parish officers shall be chosen and sworn yearly in every new parish, according to law. *f. 19.*

The commissioners, with the consent of the ordinary, may, by writing inrolled in *Chancery*, name a number of the inhabitants of each new parish to be vestrymen, who shall have the same power as the vestrymen of the parish out of which the new parish is taken; and if there are no select vestrymen in that parish, then as the vestrymen of the parish of *St Martin in the Fields* in *Middlesex* now have; and upon the death or removal, &c. of any vestryman, the rest may chuse another, being an inhabitant and householder. *f. 20.*

All parochial customs, &c. used in any parish shall, notwithstanding such division, continue in both parishes. *f. 21.*

The commissioners, with the consent of the ministers, churchwardens and overseers of the poor, and of the vestry, or of *twenty* of the principal inhabitants where there is no select vestry, from which parish any part shall be taken, and of the parish to which it shall be appointed, or else the respective ministers, parish officers, vestrymen, or principal inhabitants, with consent of the ordinary, by writing inrolled in Chancery, may make a perpetual division of such parishes as to church-rates, the poor, highways, and other parish rates; and may settle any annual sum, or consideration in the respect thereof, or for equality of such division. *f. 22.*

Until such agreement shall be made, the parish rates shall be assessed and levied through all parts which belong to such present parish. *f. 23.*

The parish officers, with the vestry or principal inhabitants of each parish, may meet every year on *Tuesday* in *Easter* week, or oftener, upon notice given on the *Sunday* before, and after morning service assess the rates for the poor, &c. and other parish rates, and apportion the said rates upon every part of such present parish so divided; which rates shall be assessed and collected in each district by the proper officers, who shall distribute the rates in reasonable proportions for every district, for the relief of poor, &c. and other parish rates within such district. *f. 24.*

When such yearly agreements shall not be made for distributing such rates, the parish officers for the district then remaining to such present church may assess and collect of the inhabitants, through the limits of such parish, all rates and taxes, as they might have done before any division. *f. 25.*

This act shall not invalidate any ecclesiastical law of the church of *England*, or destroy any of the rights of the bishop of *London*, or any other local ordinary, or any archdeacon, chancellor or official. *f. 26.*

He and they may visit, institute and exercise *ecclesiastical* jurisdiction in all parishes to be erected or divided, as in any other parish. *f. 27.*

The monies, to be issued in pursuance of this and the former act for building churches, shall be issued without *fee*. *f. 30.*

No burial shall be in or under any of the churches intended

tended to be built. And the commissioners may settle what sum shall be paid to the rector and church-officers for burials in the church-yards. *f. 31.*

By 12 *Ann. cap. 17. sect. 2.* The new church in the *Strand*, after it is finished, shall be deemed one of the fifty churches to be built in pursuance of the act 9 *Ann. cap. 22, &c.*

In every new church to be erected in pursuance to the act 10 *Ann. cap. 11.* within *Stepney* parish, the first rector shall be nominated by the principal and scholars of *Brazen Nose College* in *Oxford*, and in every chapel in the same parish which shall be converted into a parochial church. *f. 4.*

By 1 *Geo. 1. c. 23. sect. 2.* All monies which shall be raised by the duty of *three shillings per chaldre* upon coals imported into the *Thames*, from the 27th of *September 1724*, to the 28th of *September 1729*, by virtue of this act, shall be brought into the *Exchequer*; and are appropriated for the providing maintenances for the ministers in the new churches to be erected in and about *London* and *Westminster*, and shall be issued in such manner as shall be directed by parliament. Stat. 1 *Geo. 1.*
cap. 23. sect. 2.

The King may by letters patent appoint commissioners, who, or any *five* of them, shall have power to execute all the powers, &c. in the said acts; and also to inform themselves in what manner a due maintenance may be provided for the said ministers. *f. 4.*

By 4 *Geo. 1. c. 14. sect. 1.* The commissioners appointed by virtue of the two acts 9 *Ann. cap. 22.* and 10 *Ann. cap. 11.* shall cause the church of *St. Giles in the Fields* to be rebuilt, and the said church shall be taken as one of the *fifty* new churches. Stat. 4 *Geo. 1.*
cap. 14. sect. 1.

The profits of the fourth gallery shall be applied to the use of the poor of the said parish. *f. 2.*

By 5 *Geo. 1. cap. 9. sect. 4.* All the monies arising by the duties on coals imported into the port of *London* after *Lady-day 1719*, and before *Lady-day 1751*, shall be paid into the *Exchequer*, and appropriated to the several uses in this act prescribed. Stat. 5 *Geo. 1.*
cap. 9. sect. 4.

For raising the sum of 360,000*l.* in such proportions as shall be needful for building the said churches, a yearly fund of 21,000*l.* shall after *Lady-day 1719*, during thirty-

two years, be a security for paying principal and interest of the said 360,000*l.* *f. 5.*

The treasury are to direct the officers of the *Exchequer* to receive by way of loan such sums as the commissioners shall think necessary for the buildings, repairs, and other purposes, by the acts 9 *Ann. cap. 22.* and 10 *Ann. cap. 11.* intended, and to allow interest at 4*l. per cent.* and the monies so lent shall be tax free; and the lenders shall have tallies of loans, and orders for payment; the principal to be paid in course, and the interest every three months; and no fee shall be taken for payment; and the said fund of 21,000*l. per annum* shall be liable to satisfy such orders without being diverted to any other use, on pain of *treble costs* to the party grieved; and such orders shall be assignable according to the course of the *Exchequer.* *f. 6.*

The monies arising on credit of the said 21,000*l. per annum*, and all the monies of the said fund, shall be applied towards building of churches, &c. repairing *Westminster Abbey*, finishing *Greenwich Hospital*, making provision for ministers, &c. *f. 7.*

The principal of the loans, together with the monies supplied out of the funds, shall not exceed 360,000*l.* *f. 8.*

The treasury are to issue out the monies arising by loan, and out of the monies of such fund, such sums as the commissioners shall think necessary; which shall be paid to such person as his Majesty shall appoint to be the treasurer, who is to disburse the same according to such orders as he shall receive from the commissioners, and is to be accountable in the *Exchequer*, and shall give security, to be approved by the treasury. *f. 9.*

All the powers and clauses in the said acts of 9 *Ann. cap. 22.* and 10 *Ann. cap. 11.* and 1 *Geo. 1. cap. 23.* or in any other act for building the said churches, shall continue. *f. 11.*

The King may appoint commissioners to execute the powers in the said recited acts and in this act, touching the building and repairing of the said churches. *f. 12.*

By 12 *Geo. 1. cap. 39. sect. 4.* The sum of 2500*l.* part of the sum of 360,000*l.* by the act 5 *Geo. 1. cap. 9.* appointed to be raised, shall be allotted for the rector of the new church of *St. Mary le Strand*, and the treasurer shall dispose of the said 2500*l.* according to such orders as he shall

Stat. 12 Geo. 1.
cap. 39. sect. 1.

shall receive from the commissioners, in purchasing lands, &c. to be conveyed to the rector of the said new church and his successors for ever; and in the mean time place out the same by order of the commissioners, on real securities or public funds.

And for a farther provision for the rector of Saint *Mary le Strand*, the sum of *one hundred and twenty five pounds per ann.* shall be raised by an equal pound-rate on the inhabitants (except the rector, and such as shall not pay to the poor) within the district appointed for the parish of *St. Mary le Strand*: and for that purpose the rector, churchwardens, and vestry, are yearly on *Easter Tuesday*, or within fourteen days after, on notice given in the church after divine service the *Sunday* before, to make an assessment on the inhabitants for raising by an equal pound-rate, such yearly sum for the maintenance of the rector; and if the vestry shall neglect to make such assessment, it shall be lawful for the churchwardens alone, at any time within *fourteen days* after such neglect, to make such assessment. *f. 2.*

If the churchwardens shall neglect to make the assessment, they shall forfeit *one hundred pounds*, to be recovered by any person who will sue. *f. 3.*

The assessment shall be allowed by two justices of *Middlesex*, and the sums shall be collected by persons nominated by the vestry or churchwardens; and the collector refusing to act shall forfeit to the crown *one hundred pounds*, to be recovered as above. *f. 4.*

If any person shall refuse to pay the sum assessed, it shall be lawful for the collector, by warrant of two justices, to levy the same by distress and sale of goods. *f. 5.*

If any person shall find himself aggrieved by any assessment, on complaint made and notice in writing, within *six days* after demand of the monies assessed, given to the collectors, the justices of peace of *Middlesex*, at their next quarter-sessions, are to hear and determine the same. *f. 6.*

Where any houses, &c. shall be unoccupied, and where any inhabitants shall remove during the continuance of the assessment, the monies assessed not exceeding one quarterly payment shall be levied on the next tenant. *f. 7.*

The churchwardens, within *fourteen days* after every assessment, and the appeal determined, shall make two

transcripts thereof in parchment, and subscribe the same; and within *two days* shall deliver one of them to the rector, and the other shall be set up for *three weeks* in the most public place in the church, and afterwards in the vestry. *f. 8.*

The produce of the said yearly sum of *one hundred and twenty-five pounds* shall be the annual maintenance of the rector, over and above such surplice-fees as belong to the rector (*Easter* offerings excepted) and the house for the habitation of the rector, and over and above all gifts and benefits, not exceeding in the whole the yearly value of *two hundred pounds.* *f. 9.*

The rectory of *St. Mary le Strand* shall not be held in *commendam.* *f. 10.*

If the commissioners shall purchase a house for the habitation of the rector without the bounds of the parish (but near thereunto), the house shall, after the inrolment in *Chancery* of the bargain and sale, whereby the same shall be conveyed, be deemed part of the parish of *St. Mary le Strand.* *f. 11.*

The parish-clerk of *St. Mary le Strand* shall be a member of the corporation of parish-clerks. *f. 12.*

By stat. 13 and 14, if any suit be commenced for any thing done in pursuance of this act, the defendant may plead the general issue, &c. and on verdict, &c. shall recover treble costs; and this act shall be a public act.

Stat. 13 Geo. 1.
cap. 35 sect. 1.

Stat. 13 Geo. 1. cap. 35. The parishioners of the parish of *St. Catherine, Cree-church*, otherwise *Christ Church, London*, shall pay to the master and fellows of *Magdalen College, Cambridge*, during their estate in fee in the impropriate rectory and tythes of the said parish, *one hundred and fifty pounds per ann.* clear of deductions, at the four usual feast days, in lieu of all tythes, oblations, offerings, fruits, profits, and advantages, from the owners or occupiers of any houses, &c. within the said parish, and for the impropiator's providing the parish with a curate. *f. 1.*

If default shall be made in payment of the said yearly sum of *one hundred and fifty pounds* thirty days after any of the said feasts; oath of such default being made before any of the barons of the *Exchequer*, or before the lord mayor of *London*, or any justice of peace for that city, it shall be lawful for the said baron, &c. to summon such persons

persons as shall have been appointed to collect the said monies, and such other persons as they shall think necessary, and to inquire of such default; and if such collector hath received any monies, and neglected to pay the same, it shall be lawful for the said baron, &c. to issue warrants to distrain the goods of such collectors, towards satisfaction of such money, and to sell such goods; and for want of goods, to issue their warrant for imprisoning such deficient collectors, till payment be made; and if such collector shall not satisfy the monies for which he shall stand committed, within ten days, or if the duties shall not be paid to the collector, it shall be lawful for the said master and fellows, &c. to distrain for the arrears, upon any the goods of the parishioners; and the goods so distrained to keep four days, to be appraised by two persons, and sold for payment of the money. PROVIDED, That no distress be made on the goods of any person for more than *five pounds*. PROVIDED, That such payment arising by distress shall in no wise discharge the imprisonment of any collector till payment be made to a vestry; which being paid, shall be applied in ease of the next rate: and if the goods of any inhabitant be distrained, the collector shall satisfy the money, together with his charges, out of the first money that shall come to his hands. *§. 3.*

The church-wardens and vestry are required yearly, on the *twenty-fifth of March* (notice being given in the church the *Sunday* before), to make an assessment by a pound-rate, upon all occupiers of houses or tenements in the parish, for raising the said yearly sum of *one hundred and fifty pounds* in lieu of tythes, &c. which rates shall be subscribed by the alderman of the ward, or any two justices of peace for the city; and the sums shall be collected quarterly, by such persons as shall by the vestry be yearly appointed. *§. 4.*

If any person shall find himself aggrieved by any rate, on complaint to the alderman of the ward, or to any two justices of the peace for the city, within ten days after notice of such rate given to the party assessed, the said alderman or justices, summoning the party and the church-wardens, shall have power within *five days* to hear and determine the matter. *§. 5.*

If

If any person shall refuse the office of collector (not being privileged from serving parish offices), it shall be lawful for the vestry to impose a fine on such person, not exceeding *ten pounds*, which shall be levied by distress and sale of goods, by warrant of the lord mayor and two justices of peace, to be applied to the use of the poor; and it shall be lawful for any vestry to appoint other collectors instead of those refusing, dying, failing, or removing. *f. 6.*

Collectors shall not be obliged to serve that office more than *one year*, and shall be exempted from the office of overseer or collector for the poor. *f. 7.*

Every collector shall quarterly or oftener account for, and pay to the receiver appointed by the vestry, all money collected over and above the said *one hundred and fifty pounds*; and in case of neglect, the like remedy shall be had, as is provided for the recovery of the sum; and such overplus monies shall be disposed of as the common stock of the parish. *f. 8.*

If any person shall neglect to pay the money assessed, *four days* after demand, or personal notice given, or left in writing at the place of abode of such person, then (the time of appeal being lapsed, or the appeal determined) it shall be lawful for the collector in the day-time to enter into any house of such person (taking to his assistance the constable or other peace officer) to distrain the goods of such person, and to sell the same for satisfaction of such rate. *f. 9.*

If any loss or deficiency shall happen in the said rates, the same shall be made good by re-assessment to be added to the next rate; and if the churchwardens and vestry shall neglect to make such rates, and to appoint collectors *twenty days*, it shall be lawful for such churchwardens alone within *ten days* after such neglect, to make such rates, and to appoint collectors; and if such churchwardens shall neglect, &c. they shall be committed to prison till such rates, &c. be made, and collectors appointed. *f. 10.*

The inhabitants shall repair the chancel of the said parish church, and receive all profits from burials in the church, and all other profits which shall arise by the chancel; the customary dues payable to the curate excepted. *f. 11.*

The

The yearly sum of *seventy pounds* shall be paid by the master and fellows of *Magdalen College in Cambridge*, out of the sums to be paid to them by this act, to the officiating curate, clear of all deductions, by four equal payments on the feast-days before mentioned; and it shall be lawful for the persons appointed to collect the rates, out of the monies collected, to pay the said *seventy pounds per annum* to such curate; and the curate shall take to his own use the surplice-fees. *§. 12.*

By statutes 13 and 14, If any action shall be commenced against any person for what he shall do in pursuance of this act, he may plead the general issue, and on a verdict, &c. shall recover treble costs, and this act shall be a public act.

By 1 *Geo. 2. cap. 15. sect. 12.* For raising a maintenance for the rector of the new church in the Hamlet of *Spitalfields*, within the parish of *St. Dunstan, Stepney*, the sum of 3000*l.* part of the monies intended by the act 1 *Geo. 1. cap. 23.* to be raised for provision for ministers of the fifty new churches, shall be allotted for the share which the rector of the new church shall have. Stat. 1 *Geo. 2. cap. 15. sect. 12.*

In lieu of a certain sum of money, to be by the commissioners appointed to be paid to the rector for every burial, and towards raising the yearly sum of *one hundred and twenty-five pounds*, agreed to be raised within the district, and paid towards the maintenance of the rector, there shall be paid to the churchwardens of the new parish the sums following, *viz.* for every burial in the church-yards, such sums as the vestry shall, with the consent of the ordinary, settle, not exceeding *thirty shillings*, nor less than *two shillings* (fees on the burial of any person who received alms, to be paid by the overseers of the poor); and for the liberty of making vaults, or setting up any monument, such sums as the vestry shall appoint; and from the consecration of the church, and the induction of a rector, it shall be lawful to deposit any corpse in the vaults under the church or steeple, so as the floor of such vaults be not broke; and such money as shall be appointed by the vestry for depositing the corpse, shall be paid to the churchwardens towards the maintenance of the rector. *§. 2.*

It shall be lawful for the churchwardens to make vaults, and set up monuments, and deposit corpse, without any hindrance by the rector. *§. 3.*

Towards

Towards the further maintenance of the rector, the churchwardens shall yearly pay to him *one hundred and twenty-five pounds*, without deduction for taxes, at the four usual feasts, out of the monies received in pursuance of this act: and if such monies shall be deficient, then out of any public monies belonging to the parish, not arising by any poor-rate or pound-rate, as the vestry shall direct, which other money shall be made good out of the next surplus of the burial-monies. *f. 4.*

If default be made in payment of the yearly sum of *one hundred and twenty five pounds* to the rector *twenty-one days* after any of the days of payment, the rector may recover the same against the churchwardens by action of debt, &c. *f. 5.*

It shall be lawful for the rector, instead of proceeding by action, to make his complaint of such default to any one justice of peace for *Middlesex*; and on such complaint, and oath made of the same in arrear, the justice by warrant may summon the persons making default, at such time as he shall appoint, not exceeding *four days* from the date of the warrant; and if sufficient cause shall not be shewn (oath being made of due notice of such summons, in case the party concerned shall not attend), the justice may by warrant cause all such monies in arrear to be levied by distress and sale of goods, the costs to be ascertained on oath before the justice; and if sufficient distress cannot be had, the justices are to commit the offenders to the common gaol till they have paid all arrears. *f. 6.*

All succeeding churchwardens shall be liable to make good, out of any parish monies in their hands, all arrears of the said yearly sum of *one hundred and twenty-five pounds*, as aforesaid, so as such arrear do not exceed *one year's payment*, and so as such action be commenced, or complaint made against the succeeding churchwardens, within *three months* after their being sworn into the office. *f. 7.*

The rector, churchwardens, and overseers for the poor of the new parish; and all persons who have served or paid fines for the office of churchwarden and overseers of the poor for the hamlet of *Spitalfields*, or the new parish, so long as they shall continue householders within the parish

parish, and pay to the poor's rate, shall be the vestrymen of the new parish, and shall meet from time to time, on notice to be published in the church by order of the rector, churchwardens, or overseers, on the Lord's day next preceding, after divine service; and the said vestrymen shall elect a lecturer, as also churchwardens, sidersmen, parish-clerk, and all other officers, who were usually chosen for the hamlet; and also elect and put out the sexton, grave-diggers, and all other officers and servants to be employed about opening the pews, or otherwise in the church; and the lecturers shall be admitted by the rector to the use of the pulpit. *f. 9.*

The district set out for a new parish shall be a distinct parish; the name of which shall be given to the church in the act of consecration; and the inhabitants shall be discharged as well against the rector of the new church as against the rector of the parish of *Stepney*, from all *small tythes, Easter offerings, garden-pennies*, and all other duties arising within the new parish. *f. 10.*

All great tythes, or *modus* or composition in lieu thereof, within the new parish, shall continue to be paid to the principal and scholars of *King's Hall* and college of *Brazen Nose*, in *Oxford*, or the persons to whom they belong. *f. 11.*

The provisions hereby made for the rector shall be the annual maintenance of the rector, over and above surplice-fees, and the house for his habitation, and over and above all gifts and bequests to the rector; provided, that no surplice-fees upon any burial shall be taken by the rector, unless where he shall be desired to perform the burial office, or part thereof, in the church, and the corpse be carried into the church, and then only such surplice-fees as shall be settled by the vestry, with the consent of the ordinary, who are also to settle all other fees payable to each other officer belonging to the church. *f. 14.*

The payments for repairing the highways within the parish of *Stepney* shall be the same as they were before this act. *f. 18.*

By 2 Geo. 2. c. 30. Towards raising a maintenance Stat. 2 Geo. 2. for the rector of the new church in the hamlet of *Wapping*, cap. 30. sect. 12 *Stepney*, in the parish of *St. Dunstan, Stepney*, in *Middlesex*, three thousand pounds shall be allotted as the share which

which the rector shall have out of the monies intended by the act 1 Geo. 1. cap. 23. §. 1.

For the better maintenance of the rector, there shall be paid to the churchwardens, for every burial in the churchyards, such sums as the vestrymen, with consent of the bishop, shall settle, not exceeding *thirty shillings*, or less than *two shillings* (fees for burials of the poor to be paid by the overseers); and for liberty of making vaults or monuments in the church-yard or church, such sums as the vestrymen shall appoint; and corpse may be deposited in any vaults belonging to the church or steeple, so as the floor be not broken up; and the money for depositing the corpse shall be paid to the churchwardens towards the maintenance of the rector. §. 2.

Towards the better maintenance of the rector, the churchwardens shall pay him the yearly sum of *one hundred pounds, tax-free*, at the four usual feasts, out of the monies received in pursuance of this act. §. 4.

The rector, churchwardens, and overseers of the poor, and all persons who shall pay *two shillings per month* to the poor, and no others, shall be vestrymen of the new parish, and shall meet, &c. §. 9.

Stat. 3 Geo. 2.
cap. 3. sect. 1.

Stat. 3 Geo. 2. cap. 3. Towards raising a maintenance for the rector of the new church of *St. Mary of Stratford Bow*, in the county of *Middlesex*, the sum of *three thousand five hundred pounds*, part of the monies intended by the act 1 Geo. 1. cap. 23. shall be allotted as the share which the rector of the said new church shall have out of the same monies; and if no purchase can be obtained in *three years*, the rector shall not be intitled to any other interest than *3l. per cent.* till such purchase can be obtained. §. 1.

For the better maintenance of the rector, the churchwardens are impowered to raise monies, on the pews in the church and chancel, by letting them to inhabitants, not to exceed *forty-six pounds per annum*, and also the sums following, *viz.* for every burial, in the church-yard, such sums as the vestry, with the allowance of the ordinary, shall appoint, not exceeding *forty shillings*, nor less than *three shillings* for every burial (such fees for the burial of any person who received alms from the parish to be paid by the overseers); and for liberty to make any vault, or set up any monument in the church or cemetery, such
sums

sums as the vestry shall appoint, and it shall and may be lawful to deposit corpse in any vault, under the church or or steeple, so as the floor of such vault be not broken; and the money for depositing the corpse shall be paid to the churchwardens for the better maintenance of the rector.

f. 2.

The churchwardens shall yearly pay, out of any parish-monies in their hands, to the rector, the sum of *forty pounds*, without deduction for taxes, at the four usual feasts. f. 4.

The rectors of the new parish of *Saint Mary of Stratford Bow* shall be intitled to all surplice-fees and perquisites, over and above the house for habitation; and all gifts and profits, *small tythes, Easter-offerings, and garden-pennies*, excepted. f. 7.

The new parish shall be deemed a distinct parish, by the name of *St. Mary of Stratford Bow*; and be divided from the parish of *St. Dunstan Stepney*, and shall be discharged from all *small tythes, Easter-offerings, garden-pennies*, and all other duties. f. 9.

By 3 Geo. 2. cap. 17. Towards raising a maintenance for the rector of the new church in the hamlet of *Limehouse*, in the parish of *St. Dunstan in Stepney, Middlesex*, and part of the hamlet of *Ratcliff*, the sum of 3500*l.* part of the money intended by the act of 1 Geo. 1. cap. 23. shall be allotted for the share which the rector shall have. f. 1.

Stat. 3 Geo. 2. cap. 17. sect. 1.

Towards making further provision for maintenance of the rector, the churchwardens shall pay to such rector, out of any parish monies, the yearly sum of *sixty pounds*, without deduction for taxes, at the four usual feasts. f. 5.

The rector, churchwardens, and overseers, and all other persons who shall pay *twelve shillings* each book to the poor of the new parish, and none others, shall be vestrymen, and shall meet and elect a lecturer. f. 10.

The following part of this act is to the same effect of the act for *Spitalfields* church, which see before, in stat. 2 Geo. 2. c. 10. sect. 10. except the following section.

The inhabitants of that part of the hamlet of *Ratcliff*, which is intended to be part of the new parish, who shall pay *two shillings and six-pence per month* to the poor's rates of *Ratcliff*, shall be vestrymen of the new parish;
but

but they shall not intermeddle in any affairs which concern the hamlet of *Limehouse*, in those respects wherein that hamlet and the said part of the hamlet of *Ratcliff* are to continue distinct. *f. 10.*

Stat. 3 Geo. 2.
cap. 19. sect. 1.

Stat. 3 Geo. 2. c. 19. *sect. 1.* Towards raising a maintenance for the rector of the new church near *Bloombsbury-market*, in the parish of *St. Giles in the Fields*, in *Middlesex*, the sum of *three thousand pounds*, part of the monies intended by the act 1 Geo. 1. cap. 23. shall be allotted for the share which the rector shall have.

The inhabitants of *St. Giles in the Fields* shall pay to the treasurer of the commissioners *one thousand two hundred and fifty pounds*, and the said treasurer is to lay out the same as he is to lay out the before-mentioned *three thousand pounds*, and shall pay the produce of the said *one thousand two hundred and fifty pounds* to the rector of the new church, for his better maintenance; and if no purchase can be had within five years, the rector shall not be intitled to any other interest than *three pounds per cent. f. 2.*

The annual profits of the lands, &c. to be purchased with the said sums of *three thousand pounds*; and *one thousand two hundred and fifty pounds* shall be the annual maintenance of the rector of the new church, over and above surplice fees, *Easter* offerings, and other dues, and the house for his habitation, and over and above all gifts, not exceeding the yearly value of *two hundred pounds. f. 3.*

The commissioners, with the consent of the vestry of the new parish, shall ascertain what suits shall be paid to the rector, and each officer, for every burial; which sums shall be registered in *Doctors Commons. f. 5.*

The vaults and rooms under the church, excepting those belonging to the rector's dwelling-house, and also the vestry-room, together with the seats in the church, shall be vested in the churchwardens, for the public uses of the new parish, under the directions of the vestry; but the vaults shall not be disposed of, or applied to any use, without the consent of the rector. *f. 6.*

The lecturer, or afternoon preacher, for the new parish, shall be elected by the rector and vestrymen, in the vestry-room; and if there shall be an equality of voices, the person presiding shall have a casting vote; and the lecturer shall be permitted by the rector to have the use of the pulpit. *f. 10.*

There

There shall not be hung up in the steeple of the new church more than one bell. *f. 11.*

The churchwardens, overseers of the poor, and other parish officers for the new parish, shall be annually chosen, as such respective officers are for the parish of *St. Giles in the Fields*; and all rates for the poor of both parishes shall be made jointly; and the workhouse shall be for the joint use of both parishes. *f. 13.*

By the 14, 15, and 17 sections. All rights are saved to the Duke of Bedford.

Actions for things done in pursuance of this act, to be brought within *three months*, and shall be laid in *Middlesex*; and the defendant may plead the general issue, &c. and on a verdict, &c. recover *treble costs*, and that this act shall be a public act.

By 3 Geo. 2. c. 33. The sum of 3500*l.* part of the Stat. 3 Geo. 2. monies, intended by the act 1 Geo. 1. cap. 23. shall be cap. 33. sect. 8 allotted for the share which the minister of the new church in the parish of *St. Nicholas, Depford*, in the counties of *Kent* and *Surry*, shall have. *f. 1.*

For further provision for the maintenance of the rector, the churchwardens shall pay him the yearly sum of *seventy pounds*, out of any parish-monies in their hands, at the four usual feast-days, without abatement for taxes, &c. and if the monies fall short, then out of any public monies, in their hands, not arising by any poor's or pound-rate, as the vestry shall direct; to be replaced out of the next surplus arising by burials. *f. 4.*

In default of payment of the said yearly sum of *seventy pounds*, *twenty-eight days* after the same ought to be paid, the rector may sue for the same against the churchwardens, &c. *f. 5.*

The minister, churchwardens, overseers for the poor, and all other parishioners who shall pay to the poor, shall be the vestrymen of the new parish, and shall meet on notice in the church, by order of the rector, churchwardens, and overseers, or either of them, on the preceding Lord's day, after divine service; and shall elect churchwardens, sidersmen, parish-clerk, and all other officers for the said parish; and also may elect and amove the clerk, sexton, and grave-digger, and all other officers and servants employed in opening pews or otherwise about the church;

K

church: and may also nominate a lecturer, who shall be admitted by the rector to have the use of the pulpit. *f. 8.*

The district set out for a new parish, shall be a distinct parish, divided from the parish of *St. Nicholas, Depiford*, and shall be discharged from payment of *Easter offerings*, *garden-pennies*, and all other dues. *f. 9.*

If any person shall be aggrieved by any rate, he may appeal to the quarter-sessions of *Kent* or *Surrey*, as the premises assessed shall lie. *f. 10.*

All tythes arising within the new parish, which usually were the property of the vicar of the old parish, shall be continued to him and his successors. *f. 11.*

The minister and his successors, and other persons having occasion to go to the house built for the minister, shall have liberty to pass through the church-yard, by such road as the vestry shall appoint; which road shall not be less than twenty feet wide, from *Butt-lane* to the minister's house. *f. 12.*

The provisions hereby made for the minister, &c. shall be the annual maintenance of the rector of the said church, over and above surplice-fees, and the house for his habitation; and over and above all gifts to him; but no surplice-fees upon burials shall be demanded, unless where he shall be requested to perform the burial office, or part thereof, in the church, and the corpse be carried into the church, then only such fees as shall be settled by the vestry, with the allowance of the ordinary; who are to settle all fees payable to each officer belonging to the church. *f. 13.*

When the vicarage of the old parish church shall become vacant, the first rector of the new church shall be nominated by his Majesty; and all succeeding rectors of the new church shall be presented by the patron of the old church. *f. 15.*

The rectory of the new parish shall not be held in *commendam*. *f. 16.*

The churchwardens shall provide three palls for burying the dead in the church-yard or vaults under the church, and shall take for the use of them not exceeding *ten shillings*; and no person shall bring any pall into the church-yard without paying to the churchwardens, not exceeding *ten shillings*, which shall be applied as the vestry shall appoint. *f. 17.*

All

All donations that have been given to the parish of *St. Nicholas, Deptford*, shall be equally divided, for the benefit of the old parish and the new. *f. 19.*

All rates for the poor of both parishes shall be raised by two moieties, *viz.* one out of the old parish, and the other out of the new; and the workhouse and house of correction is to be for the joint use of both parishes. *f. 21.*

The two parishes shall be jointly subject for repairing the roads in the upper part of the parish of *Deptford*, which is a district for the new parish. *f. 22.*

By sections 23 and 24. Defendants may plead general issue to any action commenced for things done in pursuance of this act; and this act shall be a public act.

All glebe-land that did belong to the parish of *St. Nicholas, Deptford*, shall be vested in the churchwardens of the new parish, to be applied towards raising the *seventy pounds per annum*, to be paid by the churchwardens to the rector of the new parish. *f. 26.*

By 4 Geo. 2. cap. 20. The church of *Gravesend* shall be rebuilt as one of the fifty new churches directed to be built by the acts 9 Ann. c. 22. and 10 Ann. c. 11. and it shall be lawful for the commissioners to pay *five thousand pounds*, to be disposed of according to the direction of the mayor of *Gravesend* and others, trustees for rebuilding the said parish-church. *f. 1.* Stat. 4 Geo. 2. cap. 20. sect. 1.

By 5 Geo. 2. cap. 4. The church of *Woolwich* shall be rebuilt as one of the fifty new churches; and it shall be lawful for the commissioners to pay 8000*l.* according to the direction of the right honourable the lord *Vere Beauclerk* and others, trustees for rebuilding the said church. *f. 1.* Stat. 5 Geo. 2. cap. 4. sect. 1.

By 6 Geo. 2. cap. 8. The church of *St. George the Martyr in Southwark*, shall be rebuilt as one of the fifty new churches; and the commissioners are required to pay *six thousand pounds* to the order of the right honourable the earl of *Ailsford* and others, trustees for rebuilding the said church. *f. 1.* Stat. 6 Geo. 2. cap. 8. sect. 1.

By 6 Geo. 2. cap. 11. The sum of 3500*l.* part of the monies intended by act 1 Geo. 1. cap. 23. to be applied for the making provision for the ministers of the fifty new churches, shall be allotted for the share which the rector of the new parish church near *Horsleydown* (taken out of *St. Olave's* parish) shall have; and the treasurer

The Law of Tythes.

of the commissioners is to lay out the said sum in purchasing lands. *f. 1.*

Out of the money appropriated for building the said fifty new churches, there shall be issued such sums, not exceeding *one thousand one hundred pounds*, as shall be necessary for building a dwelling-house for the minister; and for paying the church-yard, and setting up gates and rails, &c. *f. 2.*

It shall be lawful for the churchwardens of the said old and new parishes respectively, to make vaults, and set up monuments and grave stones in the church-yards; and for the churchwardens of the new parish to set up such monuments in the new church, and deposit corpse in the same, without hindrance of the minister. *f. 6.*

The churchwardens of the new parish shall pay, out of any parish-monies in their hands, unto the minister, the yearly sum of *sixty pounds*, without deduction of taxes, at the four usual feasts. *f. 7.*

The minister, and all other parishioners occupying tenements of the yearly value of *ten pounds*, as the same shall be rated to the land-tax, shall be vestrymen, and shall meet from time to time, upon public notice read in the church, by order of the minister, churchwardens, and overseers, or either of them, on the Lord's day next preceding, after divine service; and the said vestrymen shall elect churchwardens and other officers, and elect and put out the sexton, grave-diggers, and all other officers and servants to be employed in opening the pews, or otherwise about the church, and exercise the same powers as they might have done in case they had been named vestrymen by the commissioners; and may elect a lecturer, if they think fit. *f. 11.*

The district set out for a new parish shall be a distinct parish from the parish of *St. Olave's Southwark*, and shall be discharged as well against the minister of the new church, as against the rector of *St. Olave's*, from *Easter* offerings; and also to be exempted from all other dues payable to the rector of *St. Olave's*. *f. 12.*

The provisions hereby made for the minister of the new church shall be in lieu of all *moduses*, *Easter* offerings; and other demands; excepting such surplice-fees, and other perquisites as he shall be allowed by this act to receive; and such other fees and perquisites as the vestry, with the allowance of the ordinary, shall appoint. *f. 13.*

The

The rectory of the new intended parish shall not be taken or held in *commendam*. *f.* 15.

The churchwardens shall provide three palls for burying the dead, and shall for the use of the same demand any sum not exceeding *ten shillings*, nor less than *two shillings*; and no person shall bring any pall into the church-yard, unless such person shall pay to the churchwardens such sum as they shall demand, not exceeding *ten shillings*; which sums so taken shall be applied as the vestry shall appoint; provided that the palls belonging to St. *Olave's* may be used at any funeral in the burying-places that are to be used in common between the old and new parishes, without paying any fee to the churchwardens of the new parish. *f.* 16.

All the burying-grounds within the old and new parishes shall be held in common between both parishes, and the surplice-fees for burials of persons, dying within the old parish, where the service shall be performed by the minister of the old parish, or any other officiating for him, shall be paid to the rector of the old parish; and surplice-fees for persons dying within the new parish, where the service shall be performed by the minister of the new parish, shall be paid to the rector of the new parish; and all other fees shall be paid to the churchwardens of such of the districts where the person buried did reside; provided, that if any stranger shall be buried in either of the said parishes, the fees for palls, and the burial-fees, shall be equally divided between the two parishes. *f.* 18.

The inhabitants of the new parish shall be intitled, in common with the inhabitants of the old parish, to all benefices arising from the free school. *f.* 19.

All donations that have been given to the parish of St. *Olave's, Southwark*, shall be divided in manner following, *viz.* *three-fifths* for the old parish, and out of the other *two-fifths* there shall be paid to the churchwardens of the old parish the yearly sum of *twenty-nine pounds*, free from taxes, for the benefit of the poor, and the residue of the said *two-fifths* shall be for the benefit of the new parish. *f.* 20.

The rector, and senior churchwarden, of each of the parishes, shall jointly collect the several charities and donations; and shall, with the consent of the vestry of each parish, make leases of the lands and tenements given for

the charitable purposes in such gifts and donations mentioned, as the churchwardens of *St. Olave's, Southwark*, might have done. *f. 21.*

The several churchwardens shall give half yearly accounts of the charities to any two justices of the peace for *Surrey*, not being inhabitants of either of the parishes, within *ten days* after the feast of the Annunciation and *St. Michael*; and in case they shall not appear upon summons, the justices may issue a warrant for bringing the party offending before such justice; and in case the party shall refuse to account, such justice may commit the person so refusing to the county gaol till he shall have accounted; and in case the party accounting shall neglect to pay the money in his hands as the justices shall direct, it shall be lawful for such justices to issue warrants for levying the same on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within *five days*; and where goods of such offender cannot be found, to commit such offender to the county gaol, till such money be paid, or until the major part of the vestry shall desire that the offender be discharged; but the party shall be at liberty to appeal to the next quarter-sessions. *f. 32.*

The workhouse and furniture, and the ground adjoining, shall be divided, *viz. three-fifth* parts shall be the property of the old parish, and the other *two-fifths* the property of the new parish, subject to the yearly rent of a *pepper-corn*, payable to the trustees of the free-school of *St. Olave's, Southwark*; and all persons who shall obtain any settlement in that part of the workhouse which shall be allotted to the old parish, shall be maintained by the old parish. *f. 23.*

By sections 26 and 27, Defendant may plead the general issue to actions for things done in pursuance of these enactments, and this act shall be a public act.

Stat. 6 Geo. 2.
cap. 21. sect. 1.

By 6 Geo. 2. c. 21. The sum of 3500*l.* part of the monies applied for making provision for the ministers of the fifty new churches, shall be allotted for the rector of the new church in *Old-street*. *f. 1.*

Towards raising the yearly sum of 120*l.* agreed to be raised within the Lordship part of the parish of *Cripplegate*, for the maintenance of such rector, there shall be paid to the churchwardens of the new parish, upon the burial of any

any person in the church-yards of the new parish, such sum of money as the vestrymen shall, with the allowance of the ordinary, appoint; and for the liberty of making a vault, or setting up any monument, or grave-stone, such money as the vestrymen shall appoint; and it shall be lawful to deposit any corpse in the vaults under the church or steeple so as the floor of such vault be not broke. *f. 2.*

The churchwardens shall pay out of any parish monies in their hands, unto such rector, the yearly sum of *one hundred and twenty pounds*, without deduction for taxes, at the four usual feasts. *f. 4.*

The rector, churchwardens, and overseers for the poor of the said new parish, and all other persons who have served, or paid fines for offices for the said district or new parish, so long as they continue householders within the parish, and pay to the poor's rate, shall be the vestrymen of the said parish; and the said vestrymen may elect a lecturer, as also churchwardens, sidersmen, and all other officers for the parish; and also elect, and put out, the sexton, grave-diggers, and other officers and servants. *f. 9.*

When the vicarage of the old parish church shall become vacant, the first rector of the new church shall be nominated by his Majesty, and all succeeding rectors of the said new church shall be collated by the dean of *St. Paul's, London.* *f. 14.*

All charities and donations that have been given to the parish of *St. Giles, Cripplegate*, shall be enjoyed by the vicar or churchwardens of the present parish of *St. Giles, Cripplegate*, and the churchwardens of the new intended parish, by such proportions as they were before. *f. 16.*

The burying-ground called the *Bear and Ragged-staff* burying-ground, shall be to the sole use of the old parish. *f. 17.*

The highways shall be repaired as by the laws now in being; and all money which shall be expended in repairing the same, shall be paid in the proportions following, *viz. five eight parts* by the new intended parish, and the other *three eight parts* by the old parish, commonly called the *Freedom* part. *f. 19.*

The parish-clerk of the new parish, shall be a member of the corporation of masters, wardens, assistants, and brethren of the parish-clerks. *f. 20.*

After the clerk's place of the old parish shall become vacant, the rector of the new parish shall pay to the vicar of the old parish of *St. Giles, Cripplegate*, the yearly sum of *ten pounds*, without deduction of taxes, at the four usual days of payment; and in case any of the payments shall be behind *twenty-one days*, the vicar may sue for the same against such rector by action of debt. *f. 24.*

Stat. 6 Geo. 2.
cap. 25. sect. 20.

By 6 Geo. 2. cap. 25. The commissioners of the treasury may pay out of the monies reserved for building *fifty* new churches, unto the subdean, treasurer, and steward of the collegiate church of *St. Peter, Westminster*, *four thousand pounds*, for the repair of the said collegiate church; and also to pay to the said subdean, treasurer, and steward, the further sum of *one thousand two hundred pounds* for finishing the dormitory. *f. 20.*

CHAP. IX.

*A Table of Monasteries, Abbeys, &c. exempt from Tythes,
being dissolved by Stat. 31 Hen. 8.*

A TABLE of Monasteries* of the yearly value of 200*l.*
or upwards, dissolved by Statute of 31 H. 8.

Bedfordshire.

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
Newham, pr.	C. Aust.	T. Hen. 1.	293	15	11
Elmiston, ab.	Ben.	T. W. Conq.	285	12	10
Warden, ab.	Cist.	1139. —	389	16	6
Chickland, pr.	Wh. C. Gill.	T. W. Rufus.	212	3	5
Dunstable, ab.	C. Aust.	T. Hen. 1.	344	13	3
Wooburn, ab.	Cist.	T. John.	391	18	2

Berkshire.

Reading,	Ben.	T. Hen. 1.	1938	14	3
Bulleham, ab.	C. Aust.	13 Ed. 3.			
Abington, ab.	Ben.	720			

Buckinghamshire.

Ashrugg coll.	C. Aust.	T. Edw. 1.	416	16	4
Norley, ab.	C. Aust.	1112.—	437	6	8
Missenden, ab.	Ben.	1293.—	261	14	6

Cambridgeshire.

Thorney, ab.	Ben.	972.—	411	12	11
Barewell, pr.	C. Aust.	1092.—	256	11	10

* The lands belonging to these religious houses were discharged from Tythes.

Cheshire.

*The Law of Tythes.**Cheshire.*

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
St. Worburge, ab.	Ben.	1095.—	1093	5	11
Combermeer, ab.	Cist.	1134.—	215	9	7

Cornwall.

Bodmin, pr.	C. Aust.	936.—	270	0	11
Launceston, ab.	C. Aust.	T. W. Conq.	354	0	11
St. Germain's, ab.	C. Aust.	T. Ethalstan.	248	8	0

Cumberland.

Carlisle, pr.	C. Aust.	T. W. Rufus.	418	3	4
Holme Cokrom, ab.	Cist.	1135.—	427	19	3

Derbyshire.

Darby, ab.	C. Aust.	T. H. 2.	238	14	5
------------	----------	----------	-----	----	---

Devonshire.

Ford, ab.	Cist.	1133.—	374	10	6
Newnham, ab.	Cist.	ab. 1246.	227	7	8
Dinkeswell, ab.	Cist.	1201.—	294	18	6
Hertland, ab.	C. Aust.	T. H. 2.	306	3	2
Torre, ab.	Præm.	T. Ric. 1.	396	0	12
Buckfast, ab.	Cist.	T. H. 2.	466	11	2
Plimpton, ab.	Cist.	T. Edw. 1.	241	17	9
Tavistock, ab.	Ben.	961.—	902	5	7
Exon, pr.	Clun.	T. Hen. 1.	502	12	9

Dorsetshire.

Abbotsbury,	Ben.	ab. 1016.	390	19	2
Middleton, ab.	Ben.	T. Ethalstan.	538	13	11
Tarrent, ab.	Cist.	By Henry 3.	214	7	9
Stafton, ab.	Ben.	941.—	1166	8	9
Cerne, ab.	Ben.	T. Edgar.	515	17	10
Sherburn, ab.	Ben.	ab. 370.—	682	14	7

Durham.

Durham.

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
St. Cuthbert, ab.	Ben.	ab. 842.—	1366	10	9
Tinmouth, pr.	Ben.	— —	397	11	5

Essex.

Berking, ab.	Ben.	680.—	862	12	5
Stratford Lang- thorn, ab.	}	Cift.	1135.—	511	16 3
Waltham, ab.		C. Aust.	ab. 1060.	900	4 3
Walden, ab.	Ben.	1136.—	372	18	11
St. Oswith, ab.	C. Aust.	1120.—	677	1	2
Colchester, ab.	C. Aust.	T. Hen. 1.	523	17	0

Gloucestershire.

Bristol, ab.	C. Aust.	T. Hen. 1.	670	13	11
Hayles, ab.	Cift.	1246.—	357	7	2
Winchcomb, ab.	Ben.	787.—	759	11	9
Tewkesbury, ab.	Ben.	715.—	1598	1	5
Cirencester, ab.	C. Aust.	T. Hen. 1.	1051	7	11
King's-wood, ab.	Cift.	1139.—	244	11	2
Gloucester, ab.	Ben.	680.—	1946	5	9
Lanthony, pr.	C. Aust.	1136.—	641	19	11

Hampshire.

St. Swithin's Winton, ab. }	Ben.	634.—	1507	17	2
Hyde, ab.	Ben.	by Alfred.	865	18	0
Wherwell, ab.	Ben.	by Edgar.	339	8	7
Romsey, mon.	Ben.	907.—	393	10	10
Twinham, pr.	C. Aust.	before 1042.	312	7	0
Bello loco, ab.	Cift.	1024.—	326	13	2
Southwick, pr.	C. Aust.	T. H. 1.	257	4	4
Titchfield, ab.	Præm.	T. H. 3.	249	16	1

Hertfordshire.

St. Alban's, ab.	Ben.	755.—	2102	7	1
------------------	------	-------	------	---	---

Hunting-

Huntingdonshire.

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
St. Neot's, ab.	Ben.	ab. T. Hen. 3.	241	11	4
Ramsey, ab.	Ben.	969.—	1716	12	6

Kent.

St. Austlin's, Cant.	Ben.	605.—	7413	4	11
Ledis, pr.	C. Aust.	1119.—	362	7	4
Feverham, ab.	Clun.	1147.—	286	12	7
Boxley, ab.	Cist.	1144.—	204	4	11
Roffen, ab.	Ben.	600.—	486	11	5
Mallin, ab.	Ben.	by Edmund.	218	4	2
Dartford, ab.	C. Aust.	1372.—	380	0	0

Lancashire.

Whalley, ab.	Cist.	1172.—	321	9	3
--------------	-------	--------	-----	---	---

Leicestershire.

Leicester, ab.	C. Aust.	1143.—	951	14	5
Croxdon, ab.	Præm.	ab. R. 1.	381	0	10
Launda, ab.	C. Aust.	T. W. Rufus.	99	3	3

Lincolnshire.

Lincoln, St. Cath. pr.	Gilb.	T. H. 2.	202	5	0
Kirkstede, ab.	Cist.	1139.—	286	2	7
Revelly, ab.	Cist.	1142.—	267	2	4
Thorton, ab.	C. Aust.	1139.—	594	17	10
Barney, ab.	Ben.	712.—	366	6	1
Croyland, ab.	Ben.	716.—	1803	15	10
Spalding, ab.	Ben.	1052.—	761	8	11
Sempringham, ab.	Gilb.	1148.—	317	4	1
Epworth, mon.	Castl.	1386.—	237	15	1

London.

London and Middlesex.

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
St. John Jerusalem,	—	1000.—	23	5	12
St. Barth. Smithfield,	C. Aust.	1102.—	653	15	0
St. Mary Bishopsgate,	pr.	1187.—	478	6	6
Clerkenwell, pr.	Ben.	T. Stephen.	268	19	0
London minors,	Ben.	T. Edw. 1.	318	8	5
Westminster, ab.	Ben.	T. Edgar.	347	0	2
Sion, ab.	C. Aust.	by Hen. 5.	1731	8	4
London, a house of,	Carth.	T. Edw. 3.	642	0	4
St. Clare without Ald- gate, mon.	}	1192.—	418	8	5
St. Mary, Charterhouse, mon.		1379.—	736	2	7
St. John, Holwell,	Bl. M.	1318.—	347	1	4
St. Mary East-Smith- field, ab.	Cist.	1360.—	602	11	10

Norfolk.

Therford, ab.	Clun.	1103.—	312	14	4
Wymundham, ab.	Ben.	1139.—	211	16	6
Hulmo, ab.	Ben.	by Canute	583	17	0
Westderham, ab.	Præm.	T. Hen. 2.	228	0	0
Walsingham, ab.	C. Aust.	ab. T. Stephen.	391	11	6
Castle-acre, ab.	Clun.	1090.—	366	11	4
West-acre, ab.	Clun.	T. W. Rufus	260	13	7

Northamptonshire.

Burg. St. Peter, ab.	Ben.	{ by Rosereke of Mercia. }	1721	14	0
Pipewell, ab.	Cist.		286	11	2
St. Andrew's, pr.	Clun.	1067.—	263	7	1
Sulby, ab.	Præm.	T. Stephen.	238	8	5

Nottinghamshire.

Lenton, pr.	Clun.	T. H. 1.	349	5	10
Thuragarton, pr.	C. Aust.	T. H. 1.	259	9	4
Wellbeck, ab.	C. Aust.	T. Stephen.	249	6	3
Warlop, pr.	C. Aust.	—	239	10	5
Bella Vella, pr.	Carth.	ab. 16 Ed. 3.	227	8	0
Newstead, pr.	C. Aust.	T. Ed. 3.	219	18	8

The two last are under-valued in Dugdale, but thus by Speed.

Northum-

*The Law of Tythes.**Northumberland.*

<i>Monasteriis.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
Tinmouth, 2 cell to St. Alban's, a nunnery,			511	4	1

Oxfordshire.

Godflow, ab.	Ben.	T. Stephen.	274	5	10
Eynesham, ab.	Ben.	by Etheldred	441	12	2
Osney, ab.	Cift.	T. H. 1.	654	10	2
Thame, ab.	Cift.	T. H. 1.	256	13	11
Oxford, pr.	— —	before Conq.	224	4	8
Dorchester, ab.	C. Aust.	635.—	219	12	0

Shropshire.

Hagmond, ab.	C. Aust.	1100.—	259	13	7
Lillefshull, ab.	C. Aust.	{ by Elstedak of Mercia. }	229	3	1
Wigmore, ab.	C. Aust.	1172.—	267	2	10
Wenlock, pr.	Clun.	1181 or before.	401	0	7
Salop, ab.	C. Aust.	1081.—	615	4	3
Hales Owen, ab.	Præm.	T. Johd.	337	15	6

Somersetshire.

Glaassenbury, ab.	Ben.	about 300.	3311	7	4
Brewton, ab.	C. Aust.	ab. T. Conq.	439	6	8
Henton, pr.	Carth.	T. Hen. 3.	248	19	2
Witham, pr.	Carth.	by Hen. 2.	215	15	0
Taunton, pr.	C. Aust.	T. Hen. 1.	286	8	10
Bath, pr.	Ben.	T. Hen. 3.	617	2	3
Keynesham, ab.	C. Aust.	T. Hen. 1.	419	14	3
Michelney, ab.	Ben.	740.—	447	4	11
Backland, pr.	Cift.	T. Edw. 1.	223	7	4

Staffordshire.

Dela Cres, ab.	Cift.	1153 —	227	5	0
Burton-upon-Trent,	Ben.	T. Eadred.	267	14	3
Croxden, ab.	Cift.	— —	—	—	—

Suffolk.

Suffolk.

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>
			<i>l. s. d.</i>
St. Edmundsbury, ab.	Ben.	1020.—	1659 13 11
Butley, ab.	C. Aust.	1171.—	318 17 2
Sibeton, ab.	Cift.	1150.—	250 15 7
Ixworth, ab.	C. Aust.	T. W. Conq.	280 9 5

Surrey.

Merton, pr.	C. Aust.	1414.—	957 19 5
Shene, pr.	Carth.	1414.—	777 12 0
Chertsey, ab.	Ben.	666.—	659 15 8
Newark, pr.	—	—	258 11 11
St. Maryovers, ab.	C. Aust.	1106.—	625 6 6
Burmundsey, ab.	C. Aust.	1106.—	474 14 4

Sussex.

Lewis, ab.	Clun.	T. W. Rufus.	920 4 6
Robert's Bridge, ab.	Cift.	T. Hen. 2.	248 10 6
Batalic, ab.	Bl. M.	1066.—	987 0 11

Warwickshire.

Combe, ab.	Cift.	T. Stephen.	311 15 1
Kenelworth, ab.	C. Aust.	T. Hen. 1.	538 19 0
Meryval, ab.	Cift.	1148.—	254 1 8
Nuneaton, mon.	Bca.	T. Hen. 2.	253 14 5

Wiltshire.

Malmbsbury, ab.	Ben.	ab. 670.—	803 17 7
Bradonstock, pr.	C. Aust.	T. W. Conq.	212 19 3
Edington, pr.	C. Aust.	1352.—	442 19 7
Ambresbury, ab.	Ben.	1177.—	494 15 2
Wilton, ab.	Ben.	T. Ethelwolf.	601 1 1
Fairly, a cell to Lewis,	Clun.	1125.—	217 0 4
Laycock, ab.	C. Aust.	1232.—	203 12 3

Worcestershire.

Malverne, ab.	Ben.	1083.—	308 1 9
Evesham, ab.	Ben.	T. Offa.	1183 12 3
Perthore, ab.	Cift.	—	643 4 5
Hales Owen, ab.	Præm.	T. John.	282 13 4
Bordesly, ab.	Cift.	1138.—	328 1 1

Yerk.

*The Law of Tythes.**Yorkshire.*

<i>Monasteries.</i>	<i>Order.</i>	<i>Founded.</i>	<i>Value.</i>		
			<i>l.</i>	<i>s.</i>	<i>d.</i>
St. Mary, York, ab.	Ben.	1088.—	1550	7	0
Selby, ab.	Ben.	T. W. Conq.	720	12	10
Kirkstall, ab.	Cist.	1147.—	329	2	11
De Rupe, ab.	Cist.	1147.—	224	2	5
Monks Burton, ab.	Clun.	ab. 1186.	239	3	6
Nottel, ab.	C. Aust.	T. Hen. 1.	492	18	2
Pomfrait, ab.	Clun.	T. W. Conq.	237	14	8
Gisbourn, ab.	C. Aust.	T. Stephen.	628	3	4
Whirby, ab.	Ben.	T. W. Conq.	437	2	9
Montegratia, ab.	Carth.	ab. 1396.	323	2	10
Newburge, pr.	C. Aust.	1145.—	367	8	3
Belland, ab.	Cist.	1134.—	238	9	4
Kirkham, ab.	C. Aust.	T. Hen. 1.	269	5	9
Melfa, ab.	Cist.	1136.—	299	6	4
Bridlington, ab.	C. Aust.	T. Hen. 1.	547	6	11
Walton, ab.	Gilb.	T. Stephen.	360	16	10
Bolton in Craven, pr.	C. Aust.	T. Hen. 1.	218	3	4
Rival, ab.	Cist.	1132.—	278	10	2
Jerval, ab.	Cist.	T. Stephen.	234	18	5
Farnes, ab.	Cist.	1127.—	805	16	5
De Fontibus,	Cist.	1132.—	998	6	8
Warter, pr.	C. Aust.	T. Hen. 1.	221	3	10
Richal.	—	T. Stephen.	257	7	0
St. Michael near Hull,	Carth.	1377.—	231	17	3

In Wales.

Valle de Sancta Cruce in Denbighshire;	}	Cist.	T. Edw. 1.	214	3	5
Sancta Florida in Cardiganshire,						
	}	Cist. or Clun.	T. W. Conq.	1226	6	0

Abbreviations used in the above Table.

Ab. Abbey; pr. Priory; C. Aust. Canons of St. Austin;
 Bl. M. Black Monks, Wh. C. White Canons; Ben. Benedictines;
 Gilb. Gilbertines; Præm. Præmonstratenses; Carth. Carthusians;
 Mon. Monks; Clun. Cluniacs; Cist. Cistercians; T. in the
 time of; ab. about the year.

APPENDIX.

ABSTRACT of the 43 Geo. 3. c. 84. entitled; "An Act to amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices, in *England*."

By this act, after reciting that many of the provisions of ^{21 Hen. 2. c. 13. recited.} the 21 H. 8. c. 13 intituled, *Spiritual persons abridged from* ^{c. 13. recited.} *having pluralities of livings, and from taking of farms, &c.* and other laws then in force relating to spiritual persons residing on their benefices, had been found inconvenient; and it was expedient that certain of the provisions of the said act should be repealed, and that other provisions should be made in lieu thereof; and that the said act and laws aforesaid should be amended, and more effectual provisions made for enforcing the residence of spiritual persons on their benefices, and protecting spiritual persons from vexatious prosecutions, it is enacted as follows, viz. That, from and after the passing of this act, every spiritual person who shall before the passing of this act, have incurred any pecuniary penalty or forfeiture under the said recited act, in respect of non-residence or farming of lands, and against whom no action shall have been brought under the said act, shall be indemnified, freed, and discharged from the same; and all contracts, agreements, and leases, by words, or otherwise, before the passing of this act, by any spiritual person, either by himself or any other to or for his use, which if made after this act would, according to the provisions thereof, be good and valid, shall be, and be deemed to be, as good and valid in the law, to all intents and purposes, as if the same had been made after the passing of this act.

Spiritual persons against whom no action shall have been brought under recited act indemnified, and contracts which would be good after passing this act, valid, notwithstanding that act.

By *sect. 2 & 3.* Persons sued under recited act, may apply to the court, if sitting, or to a judge, if not sitting, to stay proceedings, upon certain conditions; and such

L

court

court or judge may order any suit commenced on or subsequent to July 1, 1801, to be discontinued.

Spiritual persons may take houses, &c. though not in a city, &c. and such as have not sufficient glebe, may by consent of the bishop take farms.

From the passing of this act, it shall be lawful for any spiritual person to take to farm to himself, or to any person to his use, by lease, grant, words, or otherwise, for term of life, years, or at will, any messuage, mansion, or dwelling-house, with or without orchards, gardens, and other appurtenances, although not in any city, borough, or town; and it shall also be lawful for any spiritual person having or holding any donative, perpetual curacy, or parochial chapelry, not having any sufficient or convenient glebe or demesne lands annexed to, or in right of, or by reason of his benefice or cure or chapelry, or for any stipendiary curate, or any unbeneficed spiritual person, with the consent or approbation of the bishop of the diocese, signified in writing, to take to farm to himself, or to any person to his use for a limited term of years, any farm, lands, tenements, or hereditaments, that may, under all the circumstances, appear to such bishop proper to be taken, held, or occupied by any such spiritual person, *for the convenience and accommodation of his household and hospitality only*, without being liable to any pains, penalties, or forfeitures, under the said first recited act, or any other act by reason thereof: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorize any non-residence of any such spiritual person as aforesaid. *s. 4.*

May hold estates as property, but not any farm for cultivation, unless under a lease granted on or before January 1, 1803, or by consent of the bishop.

From the passing of this act, it shall be lawful for any spiritual person, by himself, or any other to his use, to have, hold, use, or occupy in farm, any manors, lands, tenements, or hereditaments, demised, leased or granted, to such spiritual person, as the property or estate of such spiritual person, or to take, purchase, receive, or hold, as the property and estate of such spiritual person, any lease for life, term of years, absolute or determinable on any life or lives, or to take any annual rent, or other annual advantage or profit, by occasion of any lease or term of any manors, lands, tenements, or hereditaments, the property or estate of any such spiritual person belonging to him, either in his own right, or in the right of any other person, or in right by reason of his having or holding any spiritual dignity or benefice, or so taken, purchased, received, or held as aforesaid, as the property or estate of such spiritual person, without being subject to any pains, penalties, or forfeitures.

forfeitures whatever, under the said first recited act, or any other act: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorize any spiritual person, having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, or serving a stipendiary curacy, to take, receive, or hold any such manors, lands, tenements, or hereditaments, after the passing of this act, for the purpose of occupying, for the cultivation thereof, *or procuring profit therefrom*, by himself or any bailiff, or servant for his use, unless the same shall have been taken, received or holden under a lease granted to such person on or before the 1st day of *January* 1803, or unless by the consent or approbation of the bishop as aforesaid, signified in writing. *§. 5.*

From the passing of this act, it shall be lawful for any spiritual person, by himself, or by any other for him or to his use, to bargain, and buy or sell again for any lucre, gain, or profit, any maner of cattle or corn that may be necessary, proper, or convenient to be bought, sold, kept, or maintained by such spiritual person, or any other person for him or to his use, for the occupation, manuring, improving, pasturage, or profit of any farms, lands, tenements, or hereditaments, that may under and by virtue of any law now in force, or under any of the provisions of this act, be lawfully held and occupied, possessed, or enjoyed, by such spiritual person, or any other for him or to his use, without being subject to any pains, penalties, or forfeitures, by reason thereof, under the said first recited act, or any other act: Provided always, that nothing in this act contained shall extend, or be construed to extend, to authorize any such spiritual person to buy or sell any cattle as aforesaid, or corn, in person, in any market, fair, or place of public sale. *§. 6.*

May buy or sell cattle or corn for the occupation of farms.

From and after the passing of this act, it shall be lawful for any spiritual person having or holding any vicarage or perpetual curacy, or for the stipendiary curate thereof respectively, to occupy by himself or by any other to his use in ferm, of the lease or grant of any person or persons, the improper parsonage, rectory, or vicarage respectively, of the parish of which such spiritual person shall be the vicar, or perpetual curate, or stipendiary curate, or any part or parts thereof respectively, or to take any profit or rent out of any such farm, without being subject

Vicars or curates may take leases of the improper parsonages of their parishes.

to any pains, penalties, or forfeitures, by means thereof, under the said first recited act. *f. 7.*

but where not occupied by a spiritual person before passing this act, the licence of the bishop necessary.

Provided nevertheless, That in such cases in which such impropriate parsonage, rectory, or vicarage, or such part thereof as shall be so occupied, shall not, at any time before the passing of this act, have been so occupied by the same, or any other such spiritual person as aforesaid, such person shall remain liable to such pains, penalties, and forfeitures, unless he shall have obtained the licence of the bishop for so occupying the same. *f. 8.*

Clergyman licensed or exempted from residence may occupy, where he resides, such lands as the bishop may allow.

Any clergyman, possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall be licensed or otherwise exempted from residence under this or any other act, may take to farm and occupy in the parish where he resides, or any adjoining parish, such lands for the convenience and accommodation of his household and hospitality only, as the bishop of the diocese in which he resides may allow by any writing under his hand. *f. 9.*

13 Eliz. c. 20. &c. repealed.

By the 10th section the 13th *Eliz. c. 20.* intituled, *An Act touching Leases of Benefices and other Ecclesiastical Livings with Cure*, together with all and every explanations, additions, and alterations thereof, made by several statutes in the 14th, 18th, and 43d of her said Majesty's reign, and also so much of the 3d *Car. 1.* as makes the same perpetual, is repealed.

Act not to deprive spiritual persons of any privilege they now enjoy.

Provided always, That nothing in this act shall extend or be construed to extend, to deprive any spiritual person of any privilege, indemnity, or permission, as to the taking, having, or holding any farms or lands to which any such spiritual person was or would be entitled unto, under any of the provisions of the said recited act of 21 *H. 8.* or any otherwise howsoever. *f. 4.*

Penalty for non-residence under recited act repealed, and other penalties imposed.

From and after the passing of this act, so much of the said first recited act as imposes the penalty of ten pounds on any spiritual person therein described, who shall not keep residence on one of his dignities, prebends, or benefices, but absent himself wilfully by the space of *one month* together, or by the space of *two months*, to be accounted at several times in any one year, shall be, and the same is hereby repealed; and from the passing of this act, every spiritual person, being possessed of any archdeaconry, deanery, or other dignity, prebend, benefice, donative, or perpetual

petual curacy, or parochial chapelry, who shall, without sufficient cause, as in the said first recited act, or the 25th H. 8. intituled, *An act that every judge of the high courts may have one chaplain beneficed with cure*, or under the 28th H. 8. intituled *The bill for non-residence of spiritual men and their benefices*, or under the 33d H. 8. intituled, *An act for the chancellor of the duchy of Lancaster and others to have chaplains*, is specified, or such other sufficient cause as would exempt such spiritual person from any of the pains, penalties, and forfeitures under the said recited acts, for any non-residence, and who shall not have any such licence or exemption as is in this act mentioned for that purpose, wilfully absent himself therefrom for the space of *three months* together, or to be accounted at several times in *any one year*, and make his residence and abiding at any other place or places, except at some other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of which he may be possessed, shall, when such absence shall exceed such period, and not exceed *six months*, forfeit and pay *one-third* of the annual value (deducting therefrom all outgoings, except any stipend paid to any curate), of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, from which he shall so absent himself as aforesaid; and when such absence shall exceed *six months*, and not exceed *eight months*, *one-half* of such annual value; and when such absence shall exceed *eight months*, *two-thirds* of such annual value; and when such absence shall have been for the *whole of the year*, *three-fourths* of such annual value; to be recovered by action of debt bill, plaint, or information, in any of his Majesty's courts of record at *Westminster*, or the courts of great sessions in *Wales*, wherein no effoign, privilege, protection, or wager, of law, or more than one imparlance shall be allowed; and the whole of every such penalty or forfeiture shall go and be paid to the person who shall sue for the same, together with such costs of suit as shall be allowed, according to the practice of the court in which such action shall be brought; provided, that no parsonage that hath a vicar endowed, or perpetual curate, and having no cure of souls, shall be taken to be or be comprehended under the name of *benefice*, within the true intent and meaning, or for the purposes of this act.

No parsonage that hath a vicar endowed, &c. shall be deemed a benefice.

f. 12.

The court in which any action shall be depending, may require the diocesan to certify the reputed annual value of benefices, &c.

The court in which any such action, bill, plaint, or information, shall be depending, may, upon application made for that purpose, require by rule or order of the said court, or any judge thereof, the archbishop or bishop of the diocese, within the limits of which the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, shall be locally situate, or to whom the same shall be subject, according to the provisions of this act, for or by reason of non-residence, in, at, or upon which the penalties and forfeitures shall be sought to be recovered by such action, bill, plaint, or information, to certify *in writing* under his hand to the said court; and also to the party for that purpose named in the said rule or order, the reputed annual value of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry; and upon such rule or order being left with such archbishop or bishop, or the register of such archbishop or bishop, such archbishop or bishop shall accordingly so certify such reputed annual value, and such certificate shall in all subsequent proceedings upon such action, bill, plaint, or information, be received and taken as evidence of the annual value of such dignity, prebend, benefice, &c. for the purposes of this act, without prejudice, nevertheless to the admissibility or effect of any such other evidence as may be offered or given respecting the actual value thereof.

§. 13.

No person who has resided a year without absence for more than three months, shall be liable for any previous non-residence, unless the action be commenced before he has so resided.

Provided also, that no spiritual person being possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall have made his residence and abided at his said dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the space of *one whole year*, without wilful absence therefrom, for any longer time than *three months together*, or in the whole at several times, shall be liable to any of the pains, penalties, or forfeitures in this act, or the said recited act contained, for any previous non-residence, unless the action for the recovery of such penalties or forfeitures shall have been actually commenced against such person, previous to his having completed such residence for *one year*, in the manner herein specified. §. 14.

Certain persons exempted from penalties for non-residence.

No spiritual person having or holding any office, in such manner as the same under any of the provisions of the said first recited act, or the 25th of H. 8. intituled, *An act that every*

every judge of the high courts may have one chaplain beneficed with cure; or of the 28th H. 8. intituled, *The bill for non-residence of spiritual men and their benefices*; or of the 33d H. 8. intituled, *An act for the Chancellor of the Duchy of Lancaster and others, to have chaplains*; would exempt such spiritual persons from residence, or from the penalties and forfeitures in the said acts contained for non-residence, or actually serving as a chaplain of the House of Commons, or as Clerk of his Majesty's closet, or as a deputy clerk thereof, during the time of their respective attendance, or as a chaplain general of his Majesty's forces, or brigade chaplain on foreign service, or chaplain on board any of his Majesty's ships, or of his Majesty's dock-yards, or in any of his Majesty's garrisons, or chaplain of his Majesty's corps of artillery, during the times of attending the duties of such offices respectively, or as chaplain to any *British* factory, or in the household of any *British* ambassador or publick minister residing abroad, during the time of his actually residing in such factory or household, and performing there at all due times and seasons the duties of such his office, or as chancellor or vicar general, or in his absence the principal surrogate or official in any ecclesiastical court of any diocese, whilst they are residing in the places where their respective offices are exercised, or as minor canon, or vicar choral, or priest vicar, or any such other public officer in any cathedral or collegiate church, during the times for which they may be required by the canons or local statutes thereof to reside at such cathedral or collegiate church, and actually reside and perform duty at the same, or as deans, sub-deans, priests, or readers, in his Majesty's royal chapels at *St. James's* and *Whitehall*, or as reader in his Majesty's private chapel at *Windfor* or elsewhere, or as chaplain at the royal military asylum at *Chelsea*, or royal military college at *High Wycombe*, or teacher at the royal military academy at *Woolwich*, or chaplains at the royal hospitals at *Greenwich* and *Chelsea*, or as chaplains to the royal hospitals for seamen at *Hastlar* and *Plymouth*, whilst they shall respectively reside and perform the duties of their respective offices, or as a preacher or reader in any of the inns of court at the rolls, or as burfar, dean, vice-president or publick tutor or chaplain, or other such publick officer, in any college or hall in either of the universities

of *Oxford* or *Cambridge*, during the period for which he may respectively be required, by reason of any such office, to perform the duties of any such office, and actually shall perform the duties of the same, or as publick librarian or publick registrar, or proctor, or publick orator, or other such publick officer, in either of the said universities, during the period for which he may respectively be required, by reason thereof, to perform the duties of any such office, and actually shall perform the duties of the same, or as fellow of any college in either of the universities, or of *Eton* or *Winchester College*, during the time for which he may be required to reside by any charter or statute, and actually resides therein, or as warden or provost of *Eton* or *Winchester College*, during the time for which they may be respectively required to reside, or shall actually reside therein, or as schoolmaster or usher in the same, or as schoolmaster or usher of *Westminster* school, shall be liable to any of the pains, penalties, or forfeitures in the said first recited act or this act contained, for or on account of any non-residence on any dignity, prebend, benefice, donative, or perpetual curacy. *f. 15.*

Persons entitled under 28 Hen. 8. c. 13. to privilege of non-residence till 40 years old, not to be entitled to it after 30.

From the passing of this act, no person mentioned in 28th H. 8. c. 13. intituled, *The bill for non-residence of spiritual men, and their benefices*, and entitled under the provisions of the said act, or any other act, to the privilege and liberty of non-residence until after and above the age of forty years, shall be entitled to enjoy the privilege and liberty of non-residence after or above the age of thirty years, without prejudice nevertheless to any of the exceptions and savings contained in the said act. *f. 16.*

No penalty to be levied against the person, where it can be recovered by sequestration of the benefice in three years.

No penalty or costs incurred by any spiritual person by reason of any non-residence on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, shall be levied by execution against the body of such person, whilst he shall hold the same or any other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, out of the profits of which the same can be levied by sequestration, within the term of three years; and in case the body of any such spiritual person shall be taken in execution for the same, the court in which the same was recovered, or any judge thereof, shall, upon application made for that purpose, discharge the party from such execution, in case it shall be made to appear to the

the satisfaction of such court or judge that such penalty and costs can be levied as aforesaid. *f.* 17.

From the passing of this act, it shall be lawful for the several bishops respectively, upon application made for that purpose by petition in writing, by any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, locally situated within their respective dioceses, upon such proofs as to any facts stated in any such petition as any such bishop may think necessary, if he shall require it, by affidavit made before any surrogate or master extraordinary in chancery, to grant in such cases as are herein-after enumerated, where, on due consideration of all the circumstances stated in any such application, and verified to the satisfaction of the bishop as aforesaid, such bishop shall in his discretion think it fit to grant the same, a licence in writing under his hand, expressing the cause of granting the same, for the non-residence of such spiritual person on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the purpose of exempting such person from any pecuniary penalties or forfeitures; under and subject nevertheless to the regulations, provisions, and restrictions in this act contained. *f.* 18.

Bishops may grant licences for non-residence in certain cases.

It shall be lawful for any bishop to grant licences to any spiritual persons having any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, within his diocese, to reside out of the proper house of residence, or out of the parish, and within such distance therefrom, as the case may appear to such bishop to require, if, upon the consideration of all the circumstances of any such case, such bishop shall in his discretion think the same fit and proper, in the several cases herein after mentioned; (that is to say), To any spiritual person who shall be prevented from residing in the proper house of residence, or in the parish, by *actual illness* or infirmity of body of himself, or wife or child, making part of, and residing with him as part of his family; and also to any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, whereupon or wherein there shall be *no house of residence*, or where the house of residence shall be *unfit for the residence* of such ecclesiastical person, such unfitness not being occasioned by any negligence, default, or other misconduct of such ecclesi-

Cases in which bishops may grant licences for non-residence.

ecclesiastical person, such spiritual person keeping such house of residence in such repair as shall be to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and having or possessing or occupying in the parish of the same respectively, any mansion or messuage belonging to himself or any relative, to reside in such mansion or messuage, such spiritual person keeping the house of residence, and other buildings belonging thereto, in good and sufficient repair and condition, to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, of small value, and serving as a stipendiary curate elsewhere, with the licence of the bishop of the diocese, and providing for the serving of such his benefice, donative, perpetual curacy, or parochial chapelry, to the satisfaction of the bishop of his diocese; and also to any master or usher of any endowed school duly licensed by the bishop, and actually employed in teaching therein, or to the master of any other school duly licensed by the bishop; and also to any master or preacher of hospitals or incorporated charitable foundations during the period for which he may be required to reside by any charter or statute of any such hospital or incorporated charitable foundation, or by any other lawful authority, in the same, and shall actually reside and perform his duties therein; or to any person holding any endowed lectureship, or endowed chapelry, or endowed preachership, and performing and executing the duties thereof respectively; or to any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry of small value, and serving as preacher in any proprietary chapel in cities or towns, with the licence of the bishop in whose diocese he shall so officiate; or to the librarians of the British Museum, or of Sion College; or to the trustees of Lord *Crew*'s Charity, during the times of their personal attendance on the duties of their office: Provided always, that for any such licence, the party obtaining the same shall not pay more to the secretary or officer of the bishop than the sum of *ten shillings*, exclusive of any such stamps as may be required by law: Provided always, that if any spiritual person applying to any bishop for any such licence, shall think

Fee for licences.

Persons aggrieved by refusal of licences, may appeal to the archbishop.

think himself aggrieved by the refusal thereof, it shall be lawful for such spiritual person to appeal to the archbishop of the province, who shall forthwith, either by himself, or some commissioner appointed from among the other bishops of his province, under his hand, make, or cause to be made, enquiry into the same, and by writing, signed by himself, confirm such refusal, or grant a licence under this act, as shall seem just and proper: Provided nevertheless, that the party appealing shall give security to the bishop for the payment of such reasonable expences occasioned by the appeal, as the archbishop, or his commissioner, shall award. *f. 19.*

Security to be given for payment of expences.

From the passing of this act, it shall be lawful for any such bishop as aforesaid, in any cases not herein-before enumerated, in which under all the circumstances of any such case, such bishop shall think it expedient to grant to any such spiritual person possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, a licence to reside out of the proper house of residence, or out of the parish, as the case may be, or as the case may appear to such bishop to require, and to assign, in any case in which the stipendiary curate may be employed to do the duty of such spiritual person, such salary as he shall judge fit to appoint, due respect being had to the value of the benefice, donative, perpetual curacy, or parochial chapelry, and to all the other circumstances of the case: Provided always, that in every such case the nature and special circumstances thereof, and the reasons that have induced such bishop to grant such licence as aforesaid, shall be forthwith transmitted to the archbishop of the province to which such bishop shall belong, who shall forthwith, by himself, or by some commissioner appointed for that purpose from among the bishops of such province, by writing under his hand, examine into such case, and make such enquiries as to any particulars relating thereto, as such archbishop or commissioner may think necessary, and after such enquiries, after a return of the substance thereof, in writing, to such archbishop, such archbishop shall thereupon allow or disallow such licence, in the whole or in part, or make any alteration therein as to the period for which the same may have been granted, or otherwise, and likewise as to the stipend assigned to the curate, as to such archbishop shall seem

In cases not enumerated, bishops may grant licences, and assign salaries to curates employed.

Reasons for granting them to be transmitted to the archbishop for examination and allowance.

fit;

fit; and no such licence shall be good, valid, or effectual under this act for any purpose whatever, unless it shall have been so allowed and approved by such archbishop; such allowance thereof being signified by the signing thereof by such archbishop: Provided always, that it shall not be necessary in such licence to specify the cause of granting the same: Provided also, that no licence granted under this act shall be made void by the death or removal of the bishop or archbishop granting the same, but the same shall be and remain good and valid notwithstanding any such death or removal, unless the same shall be revoked by the next or any succeeding bishop or archbishop, as the case may require: Provided also, that any spiritual person may appeal against any such revocation by the bishop alone, in like manner as is herein-before directed in case of any refusal of any licence: Provided also, that the respective archbishops may, in their respective dioceses of which they are bishops, grant licences under the provisions and regulations in this act contained, in all cases in which any licences may be granted by any bishop under this act, either by his own authority, or with the allowance and approval of the archbishop as aforesaid: Provided also, that it shall be lawful for any such archbishop to order and direct such reasonable fees and charges to be paid by any such spiritual person appealing as aforesaid, in respect of any such proceedings as aforesaid, as he shall in his discretion think fit: Provided always, that in every case when any costs and charges directed by such archbishop or bishop as aforesaid, shall remain unpaid for the period of *twenty-one* days after demand thereof left at the usual or last place of abode of the person liable to the payment, it shall be lawful for such bishop or archbishop respectively to cause the same to be recovered by sequestration of the profits of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of such spiritual person as aforesaid, and which sequestration such archbishop or bishop are respectively hereby empowered to issue. *§. 20.*

Licences not to be void by the death or removal of the grantor, unless revoked by the successor.

Archbishops, in their respective dioceses, may grant licences.

Fees may be ordered to be paid by appellants.

Costs may be recovered by sequestration.

Licences may be revoked.

Provided always, That it shall be lawful for any bishop or archbishop who shall have granted any licence for non-residence as aforesaid, or any successor or successors of any such bishop or archbishop, to revoke any such licence, in any case in which it may appear to him or them

them proper and expedient to revoke the same: Provided also, that no licence for non-residence granted under this act shall continue in force for more than *two years* from the granting thereof. *f. 21.* None to be in force more than two years.

Every such bishop or archbishop who shall grant or revoke any licence under this act, shall cause a copy of such licence or revocation to be filed in the registry of the diocese within which such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof any such licence shall be granted or revocation made, shall be locally situate; and an alphabetical list of such licences and revocations shall be made out by the register of the said diocese, and entered in a book, and kept for the inspection of all persons, upon payment of *two shillings*; and no more; and a copy of every such licence and revocation shall be transmitted to the churchwardens of the parish to which the same relates, *within one month* after the grant of such licence or revocation thereof, to be by them deposited in the parish chest; and a copy of the same shall likewise be publickly read at the visitation of the archdeacon of the archdeaconry within which the benefice, donative, perpetual curacy, or parochial chapelry, in respect whereof the licence shall have been granted or revocation made, shall be locally situate, immediately next succeeding the granting or revocation thereof. *f. 22.* Copies of licences or revocations to be filed in the registry of the diocese, and a list kept for inspection; and copies of certain licences and revocations to be transmitted to churchwardens, and publickly read at the first visitation.

Provided also, That every archbishop who shall confirm in manner directed by this act any licence in any case not enumerated in this act, or who shall grant any licence in his own dioceses, shall annually on or before the *81st of January* in each year, transmit to his Majesty in council a list of all such licences so confirmed or granted respectively as aforesaid, in the year ending on the last day of *December* preceding; and shall, in every such list, specify the reasons transmitted to him by the bishops of the several dioceses, for granting the said licences, and the reasons which have induced him to confirm the same, and also the reasons which have induced him to grant any such licence as aforesaid within his own diocese; and it shall be lawful for his Majesty in council, by any order made for that purpose, to revoke and annul any such licence, and if his Majesty in council shall think fit so to do, the same shall be transmitted to the archbishop who shall A list of licences confirmed by the archbishop, or granted in his own diocese, shall be annually transmitted to his Majesty in council, who may revoke licences, &c.

shall have confirmed or granted such licence, who shall thereupon cause a copy of every such order made in relation to any licence confirmed by him as aforementioned, to be transmitted to the bishop of the diocese in which such licence shall have been granted, who shall thereupon cause a copy of the mandatory part of the said order to be filed in the registry of such diocese, and a like copy to be delivered to the churchwardens of the parish to which the same relates, in manner herein-before directed as to licences under this act; and every such archbishop shall cause a copy of the mandatory part of every such order made in relation to any such licence as aforesaid granted by him in his own diocese, to be in like manner filed in the registry of his diocese, and a like copy also to be delivered to the churchwarden of the parish to which such licence shall relate, in manner before mentioned. *f. 23.*

Between the grant and revocation of a licence, it shall be deemed valid.

Provided always, That after such licence shall have been so revoked by his Majesty in council, the same shall nevertheless, in all questions that shall have arisen or may thereafter arise, touching the non-residence of the spiritual person to whom the same shall have been granted, between the period at which the same were granted or confirmed, and the time at which the same shall be so revoked as aforesaid, be deemed and taken to be, and to have been valid and effectual to the intents and purposes of this act. *f. 24.*

On or before March 25, 1805, and so annually, a return shall be made to his Majesty in council of every benefice &c. and of the persons who shall not have resided thereon; and every non-resident after Jan. 1, 1804, by exemption, without licence, shall yearly notify the nature of it to the diocesan within a certain period.

On the 25th of March, 1805, and at the like period in every succeeding year, a return or returns shall be made, to his Majesty in council, by every such archbishop and bishop, of the names of every dignity, prebend, benefice, donative, perpetual curacy, and parochial chapelry, within their respective dioceses, or subject to their respective jurisdictions, by virtue of this act: and the names of the several persons possessing the same, who shall not have resided thereon by reason of any exemption under or by virtue of this act or any other act, or by reason of any licence granted by such archbishop or bishop respectively, for any and what cause enumerated by this act; and also of all persons possessing the same, not having any such exemption or licence, who shall not have resided on such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, so far as the bishop is informed thereof; and for the purpose of enabling

enabling the archbishops and bishops to make such return as aforesaid, every person who shall be non-resident in any year subsequent to the 1st of January in the year 1804, by reason of any exemption under this or any other act, and to entitle him to which it is not necessary to obtain any licence under this act, shall *within six weeks* from and after the 1st of January, in every following year, notify the same in writing, under his hand, to the archbishop or bishop of the diocese to whose jurisdiction he is subject by this act or otherwise, in respect of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, specifying the nature of such exemption: Provided always, that it shall be lawful for the person making such notification, to deliver, or cause to be delivered to the registrar of such diocese as aforesaid, a duplicate of such notification in writing, and which duplicate such registrar is hereby required to file and preserve in the registry of such diocese; and in all cases in which any question shall arise, whether any such person as aforesaid has made such notification as is required by this act as aforesaid, a copy of such duplicate, certified under the hand of the registrar of the diocese for the time being, together with the time of filing the same, and which certificate such registrar is hereby required to give, upon application for that purpose made by or on the behalf of the party interested, shall be deemed and taken to be evidence that the party required to make such notification as aforesaid hath made the same. *f. 25.*

A duplicate of such notification may be delivered to the registrar to be filed, and his certificate shall be evidence of its being made.

And, to the intent to enforce such persons as aforesaid from time to time duly to make such notification as aforesaid, if any person shall wilfully neglect to make such notification as aforesaid, the person so neglecting shall not be or be deemed to be entitled, from and after the expiration of such *six weeks*, to the benefit of such exemption as aforesaid, until he shall have made such notification in writing; and such person so wilfully neglecting to make such notification as aforesaid, notwithstanding such subsequent notification, shall not be or be deemed to be entitled to such exemption in respect of any non-residence which shall have taken place between the expiration of such six weeks, and the time of making such subsequent notification; and in all cases in which any question shall arise, whether such neglect was wilful, the same shall be taken to have been wilful, unless the contrary is proved by the person claiming such exemption. *f. 26.*

Persons neglecting to make notification, shall not be entitled to exemption.

Any

Licence may be pleaded in bar of action, and in case of non-suit, &c. the defendant shall have costs.

Any spiritual person to whom any such licence for non-residence shall have been granted, and against whom any action shall thereafter be brought for any penalty or forfeiture under this or any other act, by reason of any non-residence, or any matter or thing relating whereto any licence under this act has been granted, to plead such licence in bar of any such action; and if the plaintiff in such suit or action shall be nonsuit, or shall discontinue any such suit or action after any plea of licence shall have been pleaded thereto under this act, then and in such case the defendant in such suit or action shall have full costs of suit; and if in any such suit or action a verdict shall be given for the defendant, the defendant shall have treble costs, and have the like remedy for the same as any defendant hath in other cases to recover costs by law. *f. 27.*

By whom licences may be granted, while a see is vacant, or the prelate absent.

Provided always, That during the vacancy of any see, the power of granting licences under this act, subject to the regulations therein contained, shall be exercised by the vicar general of the diocese, and that during the absence of any prelate out of the realm, or such infirmity as disables him from exercising in person the functions of his office, it shall be exercised by such person or persons as is or are lawfully empowered to exercise his general jurisdiction in the diocese. *f. 28.*

Act not to exempt from censure for non-residence without licence; but to censure for non-residence not exceeding three months in one year, shall be put in force, nor any proceedings be admitted except at the suit of the bishop or archdeacon.

Nothing in this act contained shall extend, or be construed to extend to exempt any person from any canonical or ecclesiastical censures, or affect any proceedings that shall hereafter be instituted in any ecclesiastical court, in order to cause the same to be inflicted in relation to the non-residence of any spiritual person, having or holding any benefice, donative, perpetual curacy, or parochial chapelry, not being duly licensed according to the provisions of this act to be absent therefrom, nor having any other lawful cause of absence: Provided always, that, from and after the passing of this act, no such censures by reason of any non-residence, not exceeding *three months* in any one year shall be put in force, nor shall any proceedings be admitted in any ecclesiastical court against any such spiritual person for such non-residence not exceeding *three months* in any one year, at the suit or instance of any person or persons other than the archbishop, bishop, or archdeacon only of the diocese and archdeaconry within such benefice, donative, perpetual curacy, or parochial chapelry,

chapelry, in respect whereof such non-residence shall have taken place, shall be locally situated. *s.* 29.

In every case in which it shall appear to any such bishop or archbishop as aforesaid, that any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and not being licensed according to this act to be absent therefrom, nor having any other lawful cause of absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such bishop or archbishop to issue, or cause to be issued, a monition, to such spiritual person, forthwith to proceed to and reside thereon, and perform the duties thereof, and to make a return to such monition within a certain number of days after the issuing thereof; so as that in every such case there shall be *thirty days* between the time of delivering such monition to such spiritual person, or leaving the same at his then usual or last place of abode, or if not there to be found, with the officiating minister, or one of the churchwardens, and also at the house of residence (if any such there be) belonging to such benefice, donative, perpetual curacy, or parochial chapelry, to which any such spiritual person shall be required by such monition to proceed and reside thereon, and the time specified in such monition for the return thereto; and every such monition shall immediately on the issuing thereof be filed in the registry, and open for inspection on the payment of two shillings, and no more; and the spiritual person to whom any such monition shall be sent under this act, shall, within the time specified for that purpose, make a return thereto; and it shall be lawful for the bishop or archbishop to whom any such return shall be made to require such return, or any facts contained therein, to be verified by the oath of such spiritual person, or others, to be taken before some surrogate or master extraordinary in chancery; and in every case where no such return shall be made, or where such return shall not state such reasons as shall be deemed satisfactory by such bishop or archbishop for the non-residence of the spiritual person to whom such monition shall have been sent as aforesaid, or where the same or any of the facts contained therein shall not be so verified upon oath as aforesaid, when the same shall have been required, then and in such case it shall be lawful for such bishop or archbishop to issue *an order in writing*, under his hand and

If any unlicensed person does not sufficiently reside, the bishop may issue a monition to reside, &c.

Returns to be made to monitions, which may be required to be upon oaths

Where returns shall not be made, or not be satisfactory, the bishop may order residence, and if disobeyed, may sequester the profits of the benefice, and direct an application thereof.

M

seal,

seal, to require such person to proceed to and reside as
 aforesaid, *within thirty days* after such order in writing, or
 a copy thereof, shall have been delivered or left in like
 manner as is herein-before required as to monitions; and in
 case of non compliance, it shall be lawful for such bishop
 or archbishop to sequester the profits of such benefice, do-
 native, perpetual curacy, or parochial chapelry of such
 spiritual person as aforesaid, until such order shall be com-
 plied with, or such sufficient reasons for non-residence
 stated and proved as aforesaid; and to direct, by any order
 to be made for that purpose under his hand, the applica-
 tion of such profits, after deducting the necessary expences
 of serving the cure, either in the whole or in such propor-
 tion as he shall think fit, in the first place, to the payment
 of such reasonable expences as shall have been incurred
 in relation to such monition and sequestration, and in the
 next place towards the augmentation or improvement of
 any such parsonage, vicarage, donative, or perpetual cu-
 racy, or the house of residence thereof, or any of the
 buildings and appurtenances thereof, or towards the im-
 provement of any of the glebe or demesne lands thereof;
 or may order and direct the same, or any portion thereof,
 to be paid to the governors of the bounty of Queen *Anne*,
 for the augmentation of the maintenance of the poor clergy,
 to be applied for the purpose of such augmentation as such
 bishop or archbishop shall in his discretion, under all the
 circumstances, think fit and expedient; and it shall also
 be lawful for any such bishop or archbishop, *within six*
months after such order for sequestration, or *within six*
months after any money shall have been actually levied by
 such sequestration, to remit to any such spiritual person any
 part or proportion of such sequestered profits, or cause the
 same or any part thereof that shall have been paid or di-
 rected to be paid to such governors of Queen *Anne's* bounty
 to be repaid to such spiritual person, which repayment the
 said governors are hereby authorized and required, upon
 an order under the hand of any such bishop or archbishop,
 to make out of any money then in their hands, or if no
 money shall then be in their hands, out of the next money
 that shall come to their hands, in any case in which by
 reason of the subsequent obedience of any such spiritual
 person to any such monition or order, or the stating and
 proving such sufficient reasons as aforesaid, such bishop or
 arch-

archbishop shall think the same proper : Provided always, Appeal against sequestrations may be made to the archbishop. that when any such spiritual person shall think himself aggrieved by reason of any such sequestration issued by any bishop, it shall be lawful for any such spiritual person *within fifteen days* after the making any order for any such sequestration as aforesaid, and upon such notice thereof, to be served in like manner as the monition herein before directed, to appeal to the archbishop of the province to which such bishop shall belong, who shall forthwith, either by himself or some commissioner appointed from among the bishops of his province for that purpose under his hand and seal, make or cause to be made due enquiry into the same, and make such order therein or relating thereto, or to the profits that shall be so sequestered as aforesaid, for the return to such spiritual person of the same or any part thereof, or otherwise, as shall, under all the circumstances of the case, appear to be just and proper : Provided always, that the party so appealing shall give security to the bishop for the payment of such reasonable expences occasioned by the appeal as the archbishop or his commissioner or commissioners shall award : Provided also, that no such order for any sequestration shall be put in force during such appeal as aforesaid, and until the same shall be determined. *f. 30.*

Appellant to give security for payment of expences.

Provided also, That every spiritual person to whom any such monition or order in writing shall be sent as aforesaid under this act, who shall be at the time of the issuing thereof absent from residence, in or upon his benefice, donative, perpetual curacy, or parochial chapelry, contrary to the provisions of this act, but who shall, in obedience to such monition or order, forthwith return to due residence, and the profits of whose benefice, donative, perpetual curacy, or parochial chapelry, shall, by reason of such return, not be sequestered, shall nevertheless pay all costs, charges, and expences incurred by reason of the issuing and serving such monition or order; to be levied as any costs may be levied on any spiritual person by any archbishop or bishop, under any of the provisions of this act. *f. 31.*

Persons who shall return to residence on monition, shall pay the costs.

And, to the intent effectually to enforce *bona fide* residence, according to the intent and meaning of such monitions and orders as aforesaid; if any spiritual person not licensed under this act to be absent from his benefice, donative, perpetual curacy, or parochial chapelry, not hav-

If any person returning to residence on monition, shall before six months thereafter absent

himself, the bishop may without monition, sequester the profits of the benefice.

ing other lawful cause of absence from the same, who, after any such monition or order as aforesaid, requiring his residence, and before or after any such sequestration as aforesaid, shall, in obedience to such monition or order have begun to reside upon his benefice, donative, perpetual curacy, or parochial chapelry, shall afterwards and before the expiration of *six months* next after the commencement of such residence, in the judgment and without the leave of such archbishop or bishop, begin wilfully to absent himself from such benefice, donative, perpetual curacy, or parochial chapelry, it shall be lawful for such archbishop or bishop, without issuing any other monition, or making any other order, again to sequester and apply the profits of such benefice, donative, perpetual curacy, or parochial chapelry, as is before directed by this act, for the purpose of enforcing the residence of such spiritual person, according to the true intent of the original monition issued by such archbishop or bishop as aforesaid; and it shall be lawful for the archbishop or bishop so to proceed in like cases from time to time as often as occasion may require; provided, that in each and every of such cases, such spiritual person shall be entitled to appeal against such sequestration, in such manner and upon such terms as herein-before is and are mentioned, touching appeals respecting sequestrations; but nevertheless the same shall be in force during such appeal. *f. 32.*

If a clerk shall continue under sequestration three years, or incur three sequestrations within that period, the benefice shall become void.

If any clerk shall continue under any sequestration made under the provisions of this act, for non-residence for the space of *three years*, or shall, under the provisions of this act, incur *three sequestrations* in the said space of *three years*, not being relieved, with respect to any of such sequestrations, upon appeal, the benefice, donative, perpetual curacy, or parochial chapelry, in relation to non-residence upon which such sequestrations shall have been made, shall become *ipso facto* void, and the patron or person entitled to present or nominate some clerk thereto, other than the clerk who shall have so continued under such sequestration or sequestrations, as if the same had been avoided by the natural death or resignation of the party. *f. 33.*

Contracts after passing this act, for letting houses in which any

All contracts or agreements made after the passing of this act, for the letting of houses of residence, or the buildings, gardens, orchards, and appurtenances necessary for

For the convenient occupation of the same, belonging to any benefice, donative, perpetual curacy, or parochial chapelry, to which houses of residence any spiritual persons shall be required, by order of the archbishop or bishop as aforesaid, to proceed and to reside therein, a copy of which order shall, immediately on the issuing thereof, be transmitted to one of the churchwardens of the parish, and be by him forthwith served on the occupier of such house of residence, or left at the same, shall be null and void; and any person continuing to hold any such house of residence, or any such building, garden, orchard, or premises, after the day on which the said spiritual person shall be directed by the said order to reside in such house of residence, and after service of such copy as aforesaid, shall forfeit *forty shillings* for every day he shall, without the permission of the archbishop or bishop, in writing for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard, or premises, to be recovered and applied in like manner as the penalties for non-residence are directed to be recovered and applied by the provisions of this act; but in cases of such contracts or agreements made before the passing of this act, the person holding and occupying under any such contract or agreement shall not be liable to any penalty for *three calendar months* from the time of the service of the copy of such order of the archbishop or bishop as aforesaid upon such occupier, or at such house of residence as aforesaid, sequestration shall not issue for disobedience to the order of the archbishop or bishop for three calendar months, to be computed from the service of the copy of the said order, at the expiration of which time it shall be lawful for the archbishop or bishop to issue sequestration; and from and after the expiration of which time the party continuing to hold any such house, building, garden, orchard, premises, or appurtenances as aforesaid, shall forfeit the sum of forty shillings for every day he shall wilfully continue without such permission in writing as aforesaid to hold the same, or any of them, to be recovered and applied in like manner as aforesaid. *§. 34.*

Provided always, That no spiritual person shall be liable to any penalties under this or any former act, for not residing in such house of residence during such time as such tenant shall continue to occupy such house of residence,

spiritual persons shall by order of the bishop be required to reside, shall be void; and persons holding possession after the day appointed, shall be subject to penalty; but in cases of contracts before passing this act, not till three months after service on the occupiers, &c.

No person liable to penalty for non-residence, while the tenant shall continue to occupy,

and other buildings necessary to the occupation of the same. *f.* 35.

If an action be brought for non-residence before issuing monition, sufficient to satisfy penalty and costs shall be retained out of the profits of the benefice.

Provided always, That where any action, suit, bill, plaint, or information shall have been commenced against any spiritual person to whom any monition shall besent as aforesaid, before the issuing thereof, for any penalty or forfeiture incurred by reason of non-residence, before the issuing of such monition, in such case the bishop or archbishop sending such monition, shall upon notice of such action or suit, cause to be retained so much of the profits of the benefice, as will be sufficient to satisfy any penalty, together with such costs as the plaintiff therein may be entitled to, if any, and shall, if a verdict shall be given for the plaintiff in such action, and final judgment obtained therein, after deducting all the charges which shall have been occasioned by the said sequestration, to the bishop or archbishop, or any person who shall have acted therein under his authority, pay to such plaintiff the money that shall be recovered in any such action or suit, to the plaintiff or plaintiffs therein: Provided always, that if at the time of filing any such monition, no action for any such penalty shall have been already commenced, then and in such case no such action, &c. shall be afterwards brought for any penalty or forfeiture incurred by non-residence of such spiritual person before the issuing of such monition, or during any proceedings that may be had under such monition; and if any such action or suit shall be so commenced, the defendant therein may plead, in bar thereof, that such a monition has issued in respect of the same parsonage, vicarage, denative, perpetual curacy or parochial chapelry; and such defendant, unless upon application to the court, the same shall be dispensed with, shall upon pleading such matter, file an affidavit in the said court, thereby stating, that, according to the belief of the defendant, the bishop, or archbishop who has issued or caused such monition to be issued, is proceeding or intends to proceed upon the said monition, to the intent to make the same effectual to the intents and purposes of this act, otherwise such plea shall not be good or available in the law. *f.* 36.

No oath relating to residence shall be required of any vicar.

From the passing of this act, no oath shall be required of or taken by any vicar, in relation to residence on his vicarage. *f.* 37.

All

All the clauses, provisions, penalties, and forfeitures in this act contained, in relation to residence, or to any other matters and things relating thereto, shall extend and be deemed and construed to extend to all dignities, prebends, benefices, donatives, perpetual curacies, and all parochial chapelries, exempt as well as not exempt, and all peculiars, as fully and amply to all intents and purposes as if the same had been and were in this act particularly mentioned and specified. *f. 38.*

Every archbishop, bishop, and archdeacon, within the limits of whose province, diocese, or jurisdiction respectively, any dignity, benefice, donative, perpetual curacy, or parochial chapelry respectively, exempt or peculiar, shall be *locally* situate, shall have, use, and exercise, all the powers and authorities necessary for the due execution by them respectively, of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop, &c. would have used and exercised, if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop, bishop, or archdeacon; and also that where any benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar, shall be *locally* situate within the limits of more than one province, diocese, or jurisdiction, or where the same, or any of them, shall be locally situate between the limits of any two or more of such provinces, dioceses, or jurisdictions or any of them, the archbishop or bishop to the cathedral church of whose province or diocese, the parish church of the same respectively shall be nearest in local situation, shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used, if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively; and the same, for all the purposes of this act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; and the same shall also for the purposes of this act, be taken to be within the archdeaconry of, and be subject to the jurisdiction of such archdeacon as hath jurisdiction as such over the parish, the parish church of which is nearest to the church of

Act to extend to all dignities, prebends, benefices, &c.

Archbishop, bishop, and archdeacon, within whose respective province, diocese, or jurisdiction, shall be locally situate any benefice, &c. exempt or peculiar, shall have the same powers as if they were not so; and where any such benefice, &c. shall be situate in more than one province, &c. or between the limits of two, the archbishop or bishop to whose cathedral the parish church shall be nearest shall have the like powers, &c.

Peculiars shall be subject to the archbishop or bishop to whom they belong, though situate in another diocese.

Act not to affect his Majesty's prerogative in granting dispensations, nor to affect clerks retained in his service under 9 Edw. 2. c. 8.

No archbishop or bishop shall be liable to the penalties for non-residence.

such benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar. Provided, that the peculiars belonging to any archbishoprick or bishoprick, though locally situated in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this act, as for all other purposes of ecclesiastical jurisdiction in the laws whatsoever. *s. 39.*

Provided always, That nothing in this act contained shall extend, or be construed to extend, to alter or affect his Majesty's royal prerogative in the granting of dispensations for non-residence upon benefices, as the same now exists by law; nor to affect any privileges of clerks retained in his Majesty's service under the statute passed in the ninth year of *Edward the second*, intituled, *Clerks in the King's service shall be discharged of their residence, but shall be corrected by their ordinary.* *s. 40.*

And, to the intent to avoid all doubts, No archbishop or bishop having, or who shall have, any dignity, prebend, benefice, donative, or perpetual cure, shall, by reason of non-residence upon the same, be subject or liable to any penalties or forfeitures. *s. 41.*

By *s. 42, 43, & 44.* No penalty shall be incurred under this act for non-residence prior to *Jan. 1, 1804*; nor for farming under this or any other act till *April 5, 1804*—and this act not to extend beyond *England*.

By the last *section*. If any execution shall have been sued out between *July 7, 1803*, and the day after passing this act, the judge may direct the repayment of so much of penalties and costs levied as exceeds what the defendant would have been liable to if no execution had been sued out.

TYTHE TABLES.

TO illustrate the following Tables, it is necessary to premise, that there are *three* different modes of compounding for tythes, viz.*

1st. By a valuation of the standing crops, and sale of the tythe, *when arrived at maturity.*

2dly. By an agreement, stipulating generally for a *certain sum per acre*, for the different species of crops, however arising, and whether ultimately, or not, productive.

3dly. By a general payment of a *fixed sum for every acre*, whether cropped or not, throughout the several farms.

The two first methods are liable to considerable inconveniences: the third is not only the most certain, but would, probably, prove the most permanent composition, were the parties liberally disposed towards each other.

By this method, also, the tytheholder, or his surveyor, having, by previous measurement, estimated the quantity of acres, the quality of the soil, with the proportion of arable to pasture, and the purposes to which they are usually applied, might be enabled to compound separately with each landholder.

The following Tables are estimated not according to the extraordinary prices of the present times, but according to those received in common years.†

* Bearblock on Tythes, p. 3.

† The rates, and some of the quantities, are calculated according to those laid down by Mr. Bearblock. These tables, however, are considerably enlarged, and presented under a new arrangement.

AGISTMENT OF CATTLE.

	Marsh Pasture.						Upland Ditto.					
	From Lady-day to Mich. per week.			From Mich. to Lady-day, per week.			From Lady-day to Mich. per week.			From Mich. to Lady-day, per week.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
CATTLE.												
Large beasts -	0	3	0	0	4	6	0	2	0	0	4	0
Smaller do. -	0	2	6	0	4	0	0	2	0	0	3	6
2 Years old do.	0	2	0	0	3	4	0	1	8	0	3	0
Yearling do. -	0	1	6	0	2	6	0	1	4	0	2	0
Horses above 2 years old -	0	3	0	0	5	0	0	2	6	0	4	0
2 Year old colts	0	2	0	0	3	6	0	2	0	0	3	0
Yearling colts -	0	1	6	0	2	6	0	1	6	0	2	6
SHEEP.												
Large sheep -	0	0	6	0	0	8	0	0	5	0	0	7
Smaller do. or lambs weaned	0	0	5	0	0	7	0	0	4	0	0	6
Couples -	0	0	6	0	0	9	0	0	6	0	0	8
On turnips, cole-seed, &c.												
Large Sheep -	0	0	8	0	0	8	0	0	6	0	0	6
Smaller do. or weaned lambs	0	0	4	0	0	6	0	0	7	0	0	7
Couples -	0	0	9	0	0	9	-----	-----	-----	-----	-----	-----
CATTLE.												
Large beasts -	0	4	0	0	4	0	-----	-----	-----	-----	-----	-----
Smaller do. -	0	3	4	0	3	4	-----	-----	-----	-----	-----	-----
Hogs, on clover or meadow-grass	0	0	6	0	0	6	-----	-----	-----	-----	-----	-----

Note.—Where the value of agistment varies from the preceding terms, the price usually given in that parish for depasturing of sheep, beasts, and horses, upon land of similar quality, will regulate the tythe. Profitable cattle, as long as they remain so, pay no agistment tythe.

Profitable cattle are such animals as yield a tythe from themselves, viz.—cows, yielding calves and milk—ewes, their wool and lambs—brood, mares, their foals—sows, their pigs, &c.

BARLEY.

BARLEY.*

GRAIN.

Bushels per acre.	Rate per bushel.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
25	} 0 3 0 }	3 15 0	0 7 6
28		4 4 0	0 8 4 $\frac{1}{4}$
32		4 16 0	0 9 7
36		5 8 0	0 10 9 $\frac{1}{2}$
40		6 0 0	0 12 0
44		6 12 0	0 13 2 $\frac{1}{4}$
25	} 0 3 3 }	4 1 3	0 8 1 $\frac{1}{2}$
28		4 11 0	0 9 1
32		5 4 0	0 10 4 $\frac{1}{2}$
36		5 17 0	0 11 8 $\frac{1}{4}$
40		6 10 0	0 13 0
44		7 3 0	0 14 3 $\frac{1}{2}$
28	} 0 3 6 }	4 18 0	0 9 9 $\frac{1}{2}$
32		5 12 0	0 11 2 $\frac{1}{4}$
36		6 6 0	0 12 7
40		7 0 0	0 14 0
44		7 14 0	0 15 4 $\frac{1}{4}$
28	} 0 3 9 }	5 5 0	0 10 6
32		6 0 0	0 12 0
36		6 15 0	0 13 6
40		7 10 0	0 15 0
44		8 5 0	0 16 6
28	} 0 4 0 }	5 12 0	0 11 2 $\frac{1}{4}$
32		6 8 0	0 12 9 $\frac{1}{4}$
36		7 4 0	0 14 4 $\frac{1}{4}$
40		8 0 0	0 16 0
44		8 16 0	0 17 7

Average Crop.

36 Bushels per acre, at 3s. 6d. per bushel.—Value 6l. 6s.
Tythe 12s. 7d.

* In valuing the tythe of barley, oats, peas, and beans, all the straw must be given as a compensation for all expences in collecting, threshing, and carrying out the corn.

BEANS.

Tythe Tables.

BEANS.

Bushels per acre.	Rate per bushel.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
24	} 0 3 3 }	3 18 0	0 7 9½
26		4 4 6	0 8 5¼
28		4 11 0	0 9 1
29		4 14 3	0 9 5
33		5 7 3	0 10 8½
38		6 3 6	0 12 4
42		6 16 6	0 13 7½
44		7 3 0	0 14 3½
24	} 0 3 6 }	4 4 0	0 8 4¼
26		4 11 0	0 9 1
28		4 18 0	0 9 9½
29		5 1 6	0 10 1¼
33		5 15 6	0 11 6¼
38		6 13 0	0 13 3½
42		7 7 0	0 14 8¼
44		7 14 0	0 15 4¼
24	} 0 3 9 }	4 10 0	0 9 0
26		4 17 0	0 9 9
28		5 5 0	0 10 6
29		5 8 9	0 10 10½
33		6 3 9	0 12 4½
38		7 2 6	0 14 3
42		7 17 6	0 15 9
44		8 5 0	0 16 6
24	} 0 4 0 }	4 16 0	0 9 7
26		5 4 0	0 10 4½
28		5 12 0	0 11 2¼
29		5 16 0	0 11 7
33		6 12 0	0 13 2½
38		7 12 0	0 15 2¼
42		8 8 0	0 16 9½
44		8 16 0	0 17 7
24	} 0 4 3 }	5 2 0	0 10 2½
26		5 10 6	0 11 0½
28		5 19 0	0 11 10¼
29		6 3 3	0 12 3¼

BEANS

BEANS (continued).

Bufhels per acre	Rate per bufhel.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
33	} 0 4 3 }	7 0 30	14 0 $\frac{1}{4}$
38		8 1 60	16 1 $\frac{1}{4}$
42		8 18 60	17 9
44		9 7 00	18 8 $\frac{1}{4}$
24	} 0 4 6 }	5 8 00	10 9 $\frac{1}{2}$
26		5 17 00	11 8 $\frac{1}{4}$
28		6 6 00	12 7
29		6 10 60	13 0 $\frac{1}{2}$
33		7 8 60	14 10
42		9 18 00	18 10 $\frac{1}{4}$
44		9 18 00	19 9 $\frac{1}{2}$
24	} 0 4 9 }	5 14 00	11 4 $\frac{1}{4}$
28		6 13 00	13 3 $\frac{1}{2}$
29		6 17 90	13 9 $\frac{1}{4}$
33		7 16 90	15 8
38		9 0 60	18 0 $\frac{1}{2}$
42		9 19 60	19 11 $\frac{1}{4}$
44		10 9 01	20 10 $\frac{1}{4}$

Average Crop.

32 Bufhels per acre, at 3s. 10 $\frac{1}{2}$ d. per bufhel.—Value 6l. 4s.
—Tythe 12s. 4 $\frac{1}{4}$ d.

N.B. In calculating this Tythe, the fraw is allowed to defray the expences in collecting, thrashing, &c.

CABBAGES.

Value per Acre.

From 2l. to 4l.

Tythe per Acre.

From 4s. to 8s.

CALVES.

CALVES.

As the market-price varies from 1*l.* to 3*l.* according to the seasons and demand for sucklers; where any person is not likely to have ten in one year, so that the tenth can be set forth, each calf must be valued at the time of weaning, or sale, and the tenth part of the value accounted for.

COLE-SEED, eaten off.

<i>Value per Acre.</i>	<i>Tythe per Acre.</i>
From 4 <i>l.</i> to 6 <i>l.</i>	From 8 <i>s.</i> to 12 <i>s.</i>

CLOVER. See *Hay*.

GARDEN GROUND.	GARDEN WALL.*
Tythe per acre 1 <i>s.</i> 10 <i>d.</i>	Tythe per rod 9 <i>d.</i>

GREEN TARES.

These cut green, and given in that state to cattle, are a great tythe, and worth from five to six guineas per acre. The value of the tythe from 10*s.* 6*d.* to 12*s.* 7*d.* per acre.

* Upon supposition that they are stocked, and properly managed.

HAY.

HAY.*

<i>Clover.</i>				<i>Meadow.</i>			
Lloads perA.	Per load.	Value.	Tythe.	Lloads perA.	Per load.	Value.	Tythe.
	£. s.	£. s. d.	£. s. d.		£. s.	£. s. d.	s. d.
1	3 0	3 0 0	0 6 0	1	2 10	2 10 0	5 0
1 $\frac{1}{4}$		3 15 0	0 7 6	1 $\frac{1}{4}$		3 2 6	6 3
1 $\frac{1}{2}$		4 10 0	0 9 0	1 $\frac{1}{2}$		3 15 0	7 6
1 $\frac{3}{4}$		5 5 0	0 10 6	1 $\frac{3}{4}$		4 7 6	8 9
2		6 0 0	0 12 0	2		5 0 0	10 0
1	3 10	3 10 0	0 7 0	1	3 0	3 0 0	6 0
1 $\frac{1}{4}$		4 7 6	0 8 9	1 $\frac{1}{4}$		3 15 0	7 6
1 $\frac{1}{2}$		5 5 0	0 10 6	1 $\frac{1}{2}$		4 10 0	9 0
1 $\frac{3}{4}$		6 2 6	0 12 3	1 $\frac{3}{4}$		5 5 0	10 6
2		7 0 0	0 14 0	2		6 0 0	12 0
1	4 0	4 0 0	0 8 0	1	3 10	3 10 0	7 0
1 $\frac{1}{4}$		5 0 0	0 10 0	1 $\frac{1}{4}$		4 7 6	8 9
1 $\frac{1}{2}$		6 0 0	0 12 0	1 $\frac{1}{2}$		5 5 0	10 6
1 $\frac{3}{4}$		7 0 0	0 14 0	1 $\frac{3}{4}$		6 2 6	12 3
2		8 0 0	0 16 0	2		7 0 0	14 0
1	4 10	4 10 0	0 9 0	1	4 0	4 0 0	8 0
1 $\frac{1}{4}$		5 12 6	0 11 3	1 $\frac{1}{4}$		5 0 0	10 0
1 $\frac{1}{2}$		6 15 0	0 13 6	1 $\frac{1}{2}$		6 0 0	12 0
1 $\frac{3}{4}$		7 17 6	0 15 3	1 $\frac{3}{4}$		7 0 0	14 0
2		9 0 0	0 18 0	2		8 0 0	16 0
1	5 0	5 0 0	0 10 0	1	4 10	4 10 0	9 0
1 $\frac{1}{4}$		6 5 0	0 12 6	1 $\frac{1}{4}$		5 12 6	11 3
1 $\frac{1}{2}$		7 10 5	0 15 0	1 $\frac{1}{2}$		6 15 0	13 6
1 $\frac{3}{4}$		8 15 0	0 17 6	1 $\frac{3}{4}$		7 17 6	15 3
2		10 0 0	0 1 0	2		9 0 0	18 0

* The composition for this tythe must depend entirely upon local circumstances. The tythholder should make all reasonable deductions for attendant expenses. This table commences with the estimate of a scanty and inferior crop, but progressively advances to a produce found and moderately productive.

Tares, hay, sainfoin, &c. being nearly equal in price and produce, may be estimated by the table of clover-hay.

LAMBS.

LAMBS.

As this depends upon the different breeds, no precise standard for valuation can be given: the payment of this may, however, be estimated by the production of the saleman's or butcher's bill; or the lambs drawn for market may be previously valued.

Lambs are tytheable when they can live without their dam, and when the occupier weans his own lambs, and not before.—*Croft v. Blake, Gwil. Caf. 1. vol. 2. p. 530.*

The proper time for setting forth tythe lambs, in Lincolnshire, *Heaton v. Regal, Gwil. Caf. vol. 2. p. 680.*

Tythe of Agistment must be paid for all lambs sold before they are sheared, from the time when they are weaned till the day of their removal.

MILK.

Mr. Bearblock sets down the following estimate of the produce of a cow, for one year, viz.

	£.	s.	d.
One calf - - -	1	5	0
Ten quarts of milk per day, for three months, at 2d. - -	7	11	8
Six quarts do do. do. - -	4	11	0
Four quarts do. for two months - -	2	0	0
	<hr/>		
	15	7	8
	<hr/>		
Tythe - - -	£.1	10	0
	<hr/>		

MILLS.

This is a personal tythe, and the tenth of the net annual profits is due, after deducting the rent, and all expences of the year. In case of a new mill, in the occupation of the owner, the whole expences of building the mill are not to be deducted from the first profits, but a yearly value, in the nature of a rent, is to be set upon it, and deducted.—*Hall v. Machet, Gwil. Caf. vol. 4. p. 1460.*

OATS.

OATS.

GRAIN.

GRAIN.

Bufh. perA.	Per bushel.	Value.	Tythe.	Bufh. perA.	Per bushel.	Value.	Tythe.
	s. d.	£. s. d.	s. d.		s.	£. s. d.	s. d.
28	2 6	3 10 0	7 0	38	3 3	6 3 6	12 4
29		3 12 6	7 3	40		6 10 0	13 0
32		4 0 0	8 0	43		6 19 9	13 11½
34		4 5 0	8 6	48		7 16 0	15 7
36		4 10 0	9 0				
38		4 15 0	9 6	28	3 6	4 18 0	9 9½
40		5 0 0	10 0	29		5 1 6	10 1½
43		5 7 6	10 9	32		5 12 0	11 2½
48	6 0 0	12 0	34	5 19 0		11 10½	
			36	6 6 0		12 7	
			38	6 13 0		13 3½	
			40	7 0 0		14 0	
			43	7 10 6		15 0½	
			48	8 8 0	16 9½		
28	2 9	3 17 0	7 8½	28	3 9	5 5 0	10 6
29		3 19 9	7 11½	29		5 8 9	10 10½
32		4 8 0	8 9½	32		6 0 0	12 0
34		4 13 6	9 4	34		6 7 6	12 9
36		4 19 0	9 10¾	36		6 15 0	13 6
38		5 4 6	10 5¼	38		7 2 6	14 3
40		5 10 0	11 0	40		7 10 0	15 0
43		5 18 3	11 9½	43		8 1 3	16 1½
48	6 12 0	13 2½	48	9 0 0	18 0		
28	3 0	4 4 0	8 4½	28	4 0	5 12 0	11 2½
29		4 7 0	8 8	29		5 16 0	11 7
32		4 16 0	9 7	32		6 8 0	12 9½
34		5 2 0	10 2½	34		6 16 0	13 7
36		5 8 0	10 9½	36		7 4 0	14 4½
38		5 14 0	11 4½	38		7 12 0	15 2½
43		6 9 0	12 10¾	40		8 0 0	16 0
48		7 4 0	14 4½	43		8 12 0	17 2½
28	3 3	4 11 0	9 1	48	9 12 0	19 2½	
29		4 14 3	9 5				
32		5 4 0	10 4½				
34		5 10 6	11 0½				
36		5 17 0	11 8½				

Average Crop.

38 Bushels per acre, at 3s. per bushel.—Value 5l. 14s.—
Tythe 11s. 4½d.

N

PASTURE.

PASTURE.

	Marsh.	Upland.	Clover Etches	Stubble	After Pasture
	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.
Average tythe	10s. to 15s. 12s. 6d.	8s. to 12s. 10s.	1s. 6d. to 2s. 6d. 2s.	1s. to 1s. 6d. 1s. 3d.	1s. 6d. to 3s. 2s. 3d.

PEAS.

GRAIN.

GRAIN.

Bufh. per A.	per bushel.	Value.	Tythe.	Bufh. per A.	Per bushel.	Value.	Tythe.
	s. d.	£. s. d.	s. d.		s. d.	£. s. d.	£. s. d.
22	} 3 6	3 17 0	7 8½	22	} 4 3	4 13 6	9 4
23		4 0 6	8 0½	23		4 17 9	9 9½
26		4 11 0	9 1	26		5 10 6	11 0½
30		5 5 0	10 6	30		6 7 6	12 9
33		5 15 6	11 6½	33		7 0 3	14 0½
38		6 13 0	13 3½	38		8 1 6	16 1½
44		7 14 0	15 4½	44		9 7 0	18 8½
22	} 3 9	4 2 6	8 3	22	} 4 6	4 19 0	9 10½
23		4 6 3	8 7	23		5 3 6	10 4
26		4 17 6	9 7	26		5 17 0	11 8½
30		5 12 6	11 3	30		6 15 0	13 6
33		6 3 9	12 4	33		7 8 6	14 10
38		7 2 6	14 3	38		8 11 0	17 1
44		8 5 0	16 6	44		9 18 0	19 9½
22	} 4 0	4 8 0	8 9½	22	} 4 9	5 4 6	10 5½
23		4 12 0	9 2½	23		5 9 3	10 11
26		5 4 0	10 4½	26		6 3 6	12 4
30		6 0 0	12 0	30		7 2 6	14 3
33		6 12 0	13 2½	33		7 16 9	15 8
38		7 12 0	15 2½	38		8 0 6	16 0½
44		8 16 0	17 7	44		10 9 0	1 0 10½

Average Crop.

28 Bushels per acre, at 4s. per bushel.—Value 5l. 12s.
—Tythe 11s. 2½d.

White

Tythe Tables.

179

White peas being 3d. per bushel dearer than grey—commencing at 3s. 9d. per bushel, and proceeding progressively from 4s.—4s. 6d. to 4s. 9d. inclusive, produce the same tythes as grey, at the same rate per bushel.

WHITE PEAS.

Bushels per acre.	Rate per bushel.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
22	0 5 0	5 10 0	0 11 0
23		5 15 0	0 11 6
26		6 10 0	0 13 0
30		7 10 0	0 15 0
33		8 5 0	0 16 6
38		9 10 0	0 19 0
44		11 0 0	0 1 2 0

Average Crop.

28 Bushels per acre, at 4s. 4½d. per bushel.—Value 6l. 2s. 6d.
Tythe 12s. 3d.

PEAS gathered green by Hand.

Sacks per acre.	Per sack.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
24	0 4 6	5 8 0	0 10 9½
25		5 12 6	0 11 3
27		6 1 6	0 12 1½
33		7 8 6	0 14 10
38		8 11 0	0 17 1
40		9 0 0	0 18 0
24	0 5 0	6 0 0	0 12 0
25		6 5 0	0 12 6
27		6 15 0	0 13 6
33		8 5 0	0 14 6
38		9 10 0	0 19 0
40		10 0 0	1 0 0
24	0 6 0	7 4 0	0 14 4½
25		7 10 0	0 15 0
27		8 2 0	0 16 2½
33		9 18 0	0 19 9½
38		10 8 10	1 2 9½
40		12 0 0	1 4 0

N 2

PEAS

PEAS gathered green by Hand (continued).

Sacks per acre.	Per sack.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
24	} 0 7 0 }	8 8 0	0 16 9½
25		8 15 0	0 17 6
27		9 9 0	0 18 10½
33		11 11 0	1 3 1
38		13 6 0	1 6 7
40		14 0 0	1 8 0
24	} 0 8 0 }	9 12 0	0 19 2½
25		10 0 0	1 0 0
27		10 16 0	1 1 7
33		13 4 0	1 6 4½
38		15 4 0	1 10 4½
40		16 0 0	1 12 0
24	} 0 9 0 }	10 16 0	1 1 7
25		11 5 0	1 2 6
27		12 3 0	1 4 3½
33		14 17 0	1 9 8½
38		17 2 0	1 14 2½
40		18 0 0	1 16 0

Average Crop.

30 Bushels per acre, at 5s. 6d. per bushel.—Value 8*l.* 5*s.*
—Tythe 16*s.* 6*d.*

N.B. Peas sown in fields after the garden system, are classed among great tythes, provided neither usage nor endowment have established them otherwise.—*Sims v. Bennet*, Gwil. vol. 3. p. 874.

PIGS.

Pigs are tytheable, like other young animals, when able to live without the sow, viz. at *four or five* weeks old. If the whole litter be sold, a tenth part of the price may be taken in lieu of tythe in kind; and, if reserved for store

store or fattening, a tenth part of their value. Under an annual composition, any sum from 7*s.* 6*d.* and 10*s.* is considered as a reasonable composition for every sow, in lieu of pigs.

POTATOES.

Tons per acre.	Rate per ton.	Value.	Tythe.
	£. s. d.	£. s. d.	£. s. d.
4	} 3 0 0 {	12 0 0	1 4 0
4½		13 10 0	1 7 0
4¾		14 5 0	1 8 6
5		15 0 0	1 10 0
6		18 0 0	1 16 0
7		21 0 0	2 2 0
8		24 0 0	2 8 0
4	} 4 0 0 {	16 0 0	1 12 0
4½		18 0 0	1 16 0
5		20 0 0	2 0 0
6		24 0 0	2 8 0
7		28 0 0	2 16 0
8		32 0 0	3 4 0
4	} 5 0 0 {	20 0 0	2 0 0
5		25 0 0	2 10 0
6		30 0 0	3 0 0
7		35 0 0	3 10 0
8		40 0 0	4 0 0
4	} 6 0 0 {	24 0 0	2 8 0
5		30 0 0	3 0 0
6		36 0 0	3 12 0
7		42 0 0	4 4 0
8		48 0 0	4 16 0

Average Crop.

5 Tons per acre, at 3*l.* per ton.—Value 15*l.*—Tythe 1*l.* 10*s.*

Tythe Tables.

POULTRY.

The value of this can be ascertained by no certain rule of composition, but must entirely depend upon the quantity that may be bred.

RYE.

GRAIN.

STRAW.

Bufh. per A.	Per bushel.	Value.	Loads per acre.	Per load.	Total.	Tythe.
	s. d.	£. s. d.			£. s. d.	s. d.
20	3 3	3 5 0	3	£2*	6 5 0	12 6
24		3 18 0			6 18 0	13 9½
28		4 11 0			7 11 0	15 1
20	3 6	3 10 0	3	£2*	6 10 0	13 0
24		4 4 0			7 4 0	14 4½
28		4 18 0			7 18 0	15 9½
20	3 9	3 15 0	3	£2*	6 15 0	13 6
24		4 10 0			7 10 0	15 0
28		5 5 0			8 5 0	16 6
20	4 0	4 0 0	3	£2*	7 0 0	14 0
24		4 16 0			7 16 0	15 7
28		5 12 0			8 12 0	17 2½
20	4 3	4 5 0	3	£2*	7 5 0	14 6
24		5 2 0			8 2 0	16 2½
28		5 19 0			8 19 0	17 10½
20	4 6	4 10 0	3	£2*	7 10 0	15 0
24		5 8 0			8 8 0	16 9½
28		6 6 0			9 6 0	18 7
20	4 9	4 15 0	3	£2*	7 15 0	15 6
24		5 14 0			8 14 0	17 4½
28		6 13 0			9 13 0	19 3½

Average Crop.

22 Bushels per acre, at 4s. per bushel.—Value 4l. 8s.—
 3 Loads of straw per acre, at 1l. per load.—Total 7l. 8s.—
 —Tythe 14s. 9½d.

* Deducting one-half throughout.

TARES.

TARES.

Eaten off before they become a crop fit for mowing, value from 40s. to 3l. per acre; tythe from 4s. to 6s. per acre.

It is presumed, upon the authority of the two cases *2d Austen* 482. and *Mantell v. Paine*, 4th Gwil, 1504. that the rector is not entitled to tythes of tares cut green, and, for want of other sufficient fodder, given to agricultural cattle only; but the farmer is not at liberty to sell the hay, which (after paying the tythe of the hay crop) has been carried to the stack-yard.

	Tares eaten off.			Tares cut green.			For Seed.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Crop per acre	2	10	0	5	5	0	10	16	0
Tythe	0	5	0	0	10	6	1	1	7

TURNIPS.

	Fallow.*		Etch.†	
	Value per acre.	Tythe.	Value per acre.	Tythe.
Average crop	4l. to 6l.	3s. to 12s.	2l. to 4l.	4s. to 8s.
	5l.	10s.	3l.	6s.

* Sown upon land previously prepared by a fallow.

† Late-sown turnips, upon etches or stubbles, broken-up immediately after harvest.

Tythe Tables.

WHEAT.

GRAIN.		STRAW.				
Bufh. per A	Per bushel.	Value.	Loads* per acre.	Per load.	Total.	Tythe†
	s. d.	£. s.		£. s.	£. s. d.	£. s. d.
20	6 0	6 0	2½	1 4†	7 0 00	14 0
22		6 12			7 12 00	15 2½
24		7 4			8 4 00	16 4½
28		8 8			9 8 00	18 9½
32		9 12			10 12 01	1 1 2½
20	6 6	6 10	2½	1 4†	7 10 00	15 0
22		7 2			8 3 00	16 3½
24		7 16			8 16 00	17 7
28		9 2			10 2 01	0 2½
32		10 8			11 8 01	2 9½
20	7 0	7 0	2½	1 4†	8 0 00	16 0
22		7 14			8 14 00	17 4½
24		8 8			9 8 00	18 9½
28		9 16			10 16 01	1 7
32		11 4			12 4 01	4 4½
20	7 6	7 10	2½	1 4†	8 10 00	17 0
22		8 5			9 5 00	18 6
24		9 0			10 0 01	0 0
28		10 10			11 10 01	3 0
32		12 0			13 0 01	6 0
20	8 0	8 0	2½	1 4†	9 0 00	18 0
22		8 16			9 16 00	19 7
24		9 12			10 12 01	1 2½
28		11 4			12 4 01	4 4½
32		12 16			13 16 01	7 7

Average Crop.

23 Bushels per acre, at 7s. 3d. per bushel.—Value 8l. 6s. 9d.
 —2½ Loads of straw per acre, at 1l. 4s. per load.—
 Deducting two-thirds.—Total 9l. 6s. 9d.—Tythe 18s. 8d.

* From the variety of management with respect to straw, this article is, perhaps, here rather over-rated in its produce.

† Deducting two-thirds for expenses of collecting, &c.

The

The average crops here given, are not perhaps according to the strict definition of the term *average*, or middle price: but as these calculations are intended for landholders of every county, these rules are applicable to land of *moderate* quality.

The foregoing table is according to the first method of compounding, viz.—By a valuation of the standing crops, and sale of the tythe, when they are arrived at maturity.

It is conceived, that the portion of straw which is deducted, will cover all expences of collecting, threshing, or carrying out the corn.

WOOD.

Timber trees of the age of twenty years, or above, whether they are timber by common law or by custom, are not liable to payment of tythes, either of the bodies or lops of such trees, for whatsoever purpose they may be cut, provided such trees have never been lopped or topped before they arrived at the age of twenty years; but if lopped before and afterwards occasionally, from time to time, such lops shall pay tythes, the tree not having acquired the privilege. Situation and circumstances have so powerful an influence upon this tythe, that it must depend upon its local value, when fairly set forth in tytheable order.

WOOL.

Take the weight of the whole number of fleeces, and let payment be for the tenth part, according to the current price of wool per lb.

INDEX.

I N D E X.

A.

- ABBETS and Monasteries exempt** *Barren-Land*, what is so con-
from tythes under the 31 H. 8. strued 12
- Page 137
- Abbey-Lands**, various ways in yielding a profit to the owner,
which they are discharged of subject to tythes within the
tythes 19 seven years ib.
- Acorns**, in what cases tytheable 25
- Adworsion**, what it is 6
- different kinds of ib.
- every one has tythes 32
- annexed ib.
- Aftermowth** or second mowth, ge-
neral rules respecting it 25
- Agistment** of cattle 26
- different species of cattle
- subject to this tythe ib.
- general rules for payment
of 27, 28
- table of 170
- Alders** subject to tythe 31
- Altarage**, what it is ib.
- Apples**, how tytheable 32
- Appropriation**, explanation of it 1
- how to be severed,
and a church made disappro-
priate 2
- Archbishops** may grant licences for
non-residence, within their re-
spective dioceses, see Appen-
dix. 153
- Asb**, when deemed timber, tythe
free 32
- Asp trees**, ditto ib.
- Average** crops. See *Tythe-table*

B.

- Bark**, where the tree from whence
taken is timber-tree, not sub-
ject to tythes 32
- true explanation of under
2 *Edw. 6.* ib.
- Barley**, table of composition, for
171
- Beans**, do, do. 172

- Beans and Peas** planted in rows
deemed small tythes, and pay-
able to impropiator 32
- Beech**, mast of, how considered 33
- by common law not confi-
dered as timber ib.
- and subject to tythe, has
been adjudged privileged by
St. Sylv. Cædua ib.
- Bees** in their wild state tythe free,
but pay tythes if gathered in
hives ib.
- in hives, pay *tenth* measure
of honey, and *tenth* pound of
wax ib.
- Birch**, subject to tythe, though of
twenty years growth ib.
- Broom**, if dug up for tillage, is
tytheable; if used for husbandry
not ib.

C.

- Cabbages**, table of composition for
173, 174
- Calves**, how tythes of, are paid 33
- Cattle**, tytheable depastured on
wastes or common ground,
where parish not certainly
known, to pay tythes to the
parson of the parish where
owner of such cattle dwell 34
- persons not liable to these
tythes where settled by compo-
sition 34
- fed on waste ground, where
boundaries of parish are uncer-
tain, pay tythes to incumbent
where owner inhabits, unless
exempt ib.

Chalk,

INDEX.

- Chalk*, tythe free, being of the substance of the earth 34
- Cheese*, not tytheable where milk has paid tythes - ib.
- Church*, nature of its endowments under 4 H. 4. c. 12. - ib.
- Clay*, not tytheable - ib.
- Cherries*, black, have been held subject to tythe - ib.
- Cherry-trees* - - - - - ib.
- Chickens*, when tytheable - ib.
- Clerk* how presented to a parsonage or vicarage - 4
- if bishop refuse to present him, patron may proceed against him - 5
- on institution, may enter and take tythes, but cannot grant, let, or bring actions until induction - ib.
- Clover*, in what cases tytheable 34
- tythes of, to whom payable ib.
- Coal*, not tytheable - 35
- Cole-seed*, composition for 174
- Colts*, when tytheable, see *Calves*.
- Composition real*, explained 14
- Conies*, not tytheable, except by custom - 36
- Corporations appropriated*, how served formerly in their ecclesiastical functions 3
- Corn*, a predial great tythe, and payable according to the custom of the place - 35
- tythe how to be set out 36
- Custom or Prescription*, what distinctions between them - ib.
- what makes a good one - ib.
- D.**
- Dotards*, or old decayed trees, exempt from tythe as *sylvæ caduæ* - 36
- Doves*, kept in dove-house, may pay tythe by custom 37
- in what cases paying a certain number constitutes a good modus - ib.
- Ecclesiastical courts*, how they proceed. See *Tythes*.
- *leases*. See *Leases*
- *livings*, all bonds and covenants for, how far void by 18 *Elix.* - 95
- Eggs*, how tytheable - 37
- where paying a certain number held a good modus ib.
- Elm*, deemed timber, and within the privilege of *sylvæ caduæ* - ib.
- Exemption* from tythes by modus, custom or prescription 14, 15
- Extra parochial tythes*. See *Tythes*
- F.**
- Fallow*, not subject to tythe, if for apparent benefit of the soil 37
- Farms or Leases* under 11 H. 8. and 5 Geo. 3. See *Leases*.
- Fens*, being drained, are not exempt from tythe - 12
- Fenny-land*, what is so considered - ib.
- Fera Nature*, what are so deemed - 10
- Fillies* pay tythe till employed in business or husbandry, or bear foals - 27
- Fish*, sea and river, tytheable by custom - 38
- Forest-lands*, how tythe of, to whom payable - 10
- Flax*, a small tythe, though sown in large fields - ib.
- Fowls*, as hens, geese, ducks, &c. are tytheable, either in eggs or young, but not in both - ib.
- Fruit*, apples, pears, plums, cherries, &c. when gathered, pay tythe in kind - ib.
- Fuel*, of any kind, spent in owner's house pays no tythe - ib.
- used in drying hops, an exception to this rule - 38
- Furzes*, if used for fuel or to pen sheep, not subject to tythe 39

E.

Easter offerings. See *Offerings*

G.

Gardens, pay tythe of herbs and plants - 39

Garden

INDEX.

Garden-ground, composition for 174
Glass-house, not subject to tythe in 40
 kind 39
Glebe land, what it is 13
 — leased by parson, and
 tythes there of not granted, such
 tythes must be paid by the te-
 nant 8
 — same rule applies where
 leases made by impropriators,
 vicars, &c. ib.
 — explained ib.
 — profits of, how they
 operate on a demise ib.
Green-tares, composition for 174
Grants, made by a prebend, how
 to be confirmed 88
 — by deans, do. ib.
 — by archdeacons, do. ib.
 — by parsons and vicars, do.
 ib.
 — by the incumbent of a do-
 native, do. ib.
Gravel, not subject to pay tythes 39

H.

Hay, tytheable of common right
 in swathes, wind-rows, or cocks,
 according to custom 39
 — mown to feed deer, subject
 to tythe, unless a custom to the
 contrary ib.
 — table of composition for 175
Hazle, how tytheable 39
Head-lands, whose owner reaped,
 bound, and shocked the corn,
 held discharged of tythes 40
 — sown with corn, held
 discharged of tythes, because
 fed with ploughed cattle, or
 mowed and cut for that pur-
 pose ib.
Heath-ground, what is so con-
 sidered 12
Hemp and Flax, by 11 & 12 W. 3.
 to pay tythe of 5s. per acre 40
Holly, subject to tythe ib.
Honey, tythe ought to be paid in
 kind ib.
Hops, in Kent, deemed a great tythe
 when in orchards or gardens re-

solved to belong to the vicar, pay
a predial tythe, and regularly,
accounted small tythes 40
Horses, when subject to tythe
and when not 41
Houses, of common right, pay no
tythe, but time out of mind a
modus has been paid for houses
in lieu of the tythe of lands
upon which houses are built ib.
House-lambs, how tythed ib.

L.

Lambs, deemed a mixed small
tythe 41
 — how compounded for 170
 — house. See *House-lambs*
Land, bearing broom, not exempt
from tythes, under St. 6 Edw.
6. 12
 — gained from the sea, not ex-
 empt when cultivated ib.
 — *Glebe*. See *Glebe-land*
Lead, exempt from tythe, as being
the substance of the earth 42
Licences for non-residence, in what
cases grantable by bishops 153
 — fees for do. 154
 — reasons for grant-
 ing them to be transmitted to
 archbishops 155
 — in what cases to
 be void 156
Lime, exempt from tythe as be-
ing of the substance of the
earth 42
London, method of paying tythes
in the several parishes of, with
the respective sums paid by
each 96, 109
Loppings of timber trees, of *twenty*
years growth not subject to
tythe 42
Leases, ecclesiastical, power of spir-
itual persons in granting them 79
 — requisites of, under the sta-
 tutes 80
 — of what things may be made 83
 — rents of, how recoverable ib.
 — not binding by common
 law, unless confirmed ib.
 Leases

INDEX,

- Leases*, under hand and seal for three years, are by 32 H. 8. good against lessors, their wives, heirs, and successors page 83
 — how such leases are to be made ib.
 — how to be made, where a bishop has two distinct manors usually demised together ib.
 — concurrent ib.
 — restrictive, statutes relative to those made by deans, prebends, &c. ib.
 — bonds and covenants, contrary to 13 & 18 *Eliz.* void 91
 — of parsons void by non-residence 90
 — all charges, other than rents reserved, shall make them void 85
 — in what cases parson may demise without residence ib.
 — none good in reversion, unless customary, yearly rent reserved therein ib.
 — how lessee may hold on his term by 28 *Hen.* 8. ib.
 — of colleges and hospitals 92
 — may be taken by vicars and curates of the impropriate parsonages of their parishes 147

M.

- Madder*, subject to tythe of 5s. per acre 42
Maple, subject to tythe, though of twenty years growth 43
Mast, tythe of crabs, mast, &c. to be paid when gathered, or satisfaction made if eaten by swine on the ground ib.
Milk, manner of paying thythes of, ib.
 — how compounded for 176
Mills, deemed of two sorts, viz. corn-mills, or mills for other purposes. Corn mills pay tythe, others not, unless by custom 44
 — wind-mills, fulling-mills, tin-mills, lead-mills, plate-mills &c. how tytheable ib.

- Modus* or customary payment in lieu of tythes, explanation of it page 15
Modus, what makes a good one ib.
 — general maxim of law in which it is determined 22
 — what consideration given will create one ib.
 — reasons why the spiritual courts are restrained by courts of law from trying one 23
Monasteries. See *Abbeys*.

N.

- Non-residence*, licences may be granted for, by bishops in certain cases 159
Notification of persons exempt from penalties for non-residence, within what time to be made 158
Nurseries, subject to tythe 45

O.

- Oak*, mast of, and acorns, how considered. See *Mast*.
 — ash, and elm, privileged from tythe by stat. *sylva cordua* 46
Oats, table of composition for 177
Offerings, Easter, due of common right, or two-pence per head, unless allowed by custom 46
Orchards, if sown with any kind of grain, tythe is due both for fruit-trees and grain ib.
Ordinary, offences against 13
Eliz. to be made to him 66
 — if he neglect, any parishioner may proceed upon this statute ib.
Overs, if used by owner, for hurdles for his sheep, not tytheable, otherwise if sold ib.
Parks,

INDEX.

P.

Parks, if modus were a certain consideration in money for all tythes in such a park, the modus will hold, if such park be afterwards disparked; but if it had been for deer and herbage, it would have been lost page 46
Parson, his ecclesiastical definition

— ecclesiastical distinction between him and a vicar 4
 — or vicar, how to make a lease under the statutes, or rectory ib.
Parsonage, usually consists of glebe-lands, tythes, and offerings 6
 — may have no glebe but the church and church-yard ib.
 — in London, has neither glebe nor tythes ib.
 — in a grant of the glebe, tythes, and offerings, pass of course ib.
 — having a vicar endowed, not to be deemed a benefice 149
Partridge, not subject to tythe as *fera natura* 46
Pasture, table of composition for 478
Peas, if gathered for family use, pay no tythes; if for sale, or to seed swine, otherwise 47
 — table of composition for 178
Pheasants, not subject to tythe 47
Pigeons, not subject to tythe ib.
Pigs, how compounded for 180
Potatoes, how compounded for ib.
Poultry, do. do. 182
Prebends, grants by, how to be confirmed. See *Grants*
Prescription, what it is 17
 — where good with respect to tithes 48
 — See *Custom*
Prohibitions, upon tythes, purchase of, how regulated 71

Q.

Quakers, compelled to pay tythes by 7 & 8 W. 3. c. 34. 75

Quakers, further remedy given against them 76
 — justices empowered to proceed against them by distress and sale 77
Quarries, not tytheable, being of the substance of the earth 70

R.

Rakings, pay no tythes 47
Rape-seed, pay tythe usually at rate per acre ib.
Rectory. See *Parsonage*
Religious houses. See *Abbeys*
Residence, non, penalties for abstract 43 Geo. 3. c. 24.
 — for enforcing residence of spiritual persons on their benefices in England 145
Roots, if grubbed up, not liable to tythe 47

S.

Saddle-horses. See *Horses*
Saffron, held to be a predial small tythe 47
Salt, not tytheable, unless by custom ib.
Scire Facias, writ of, given by 18 Edw. 3. to warn prelates 71
 — extent of this writ ib.
 — its operation ib.
Sherp. See *Agistment*
Spiritual persons, abstract of 43 Geo. 3. c. 84. for amending the laws relative to their holding farms, and for enforcing their residence on their benefices 145
 — courts, how they proceed with respect to moduses. 24
 — may take houses, &c. though not in any city: and where not sufficient glebe, take farms by consent of the bishop 146
 — in what cases may hold estates as property ib.
 — may buy or sell cattle or corn for the occupation of farms 147
Spiritual

INDEX.

- Spiritual persons*, in what cases exempted from actions commenced for non-residence 150
 — exempted from penalties of - ib.
 — no penalties for non-residence to be levied against the parson, where recoverable by sequestration of benefice in three years - 152
Seraw, given in as a compensation for expences in collecting, &c. in valuing the tythe of barley, oats, peas, and beans 173
- T.**
- Tares*, whether green or ripe, a great tythe, unless used to feed cattle - 48
 — composition for - 183
Tile, not tytheable - 48
Timber-trees, above twenty years growth, cut and corded for fuel, subject to tythe, otherwise not 49
Trees, fit for building ships or houses, &c. exempt from tythes ib.
Turf, deemed tythe free, as part of freehold - ib.
Turkies, how tytheable 49
Turnips, do - ib.
Tythes, what they are - 7
 — how first divided for use of the church - ib.
 — how classed - ib.
 — how divided, as to their value, into great and small 8
 — the above division may be altered by custom - ib.
 — extra parochial, to whom they belong - ib.
 — personal, are regulated by 2 & 3 *Edw.* 6. - ib.
 — and other profits annexed to a rectory on the death of the incumbent, go to successor 9
 — but executor of, the parson shall have the corn sown by the testator in his life-time ib.
 — if parson or vicar sow land, and be deprived, resign, or accept another living, shall devolve upon the successor Page 9
Tythes, shall not be paid by a vicar upon a general endowment for the glebe, unless the endowment contain special words to bind him - ib.
 — by prescription may be appendant on an ancient chapel ib.
 — personal, are to be paid by the canon law, where the party communicates - ib.
 — predial, are to be paid to the parson where the land lies ib.
 — general maxims of paying them - ib.
 — exceptions to the general maxim of paying them ib.
 — of all tytheable articles, to be paid as often as they yield a profit to the owner - ib.
 — of extra parochial forest lands, to be paid to the King 10
 — for parks, how payable ib.
 — for barren heath or waste ground - ib.
 — explanation of the modus or customary payment in lieu of - 15
 — who are exempt from 13, 18
 — of *agistment*, by whom to be paid - 26
 — general rules for payment of - 27
 — remedy for refusing payment of - 31
 — how to be set out - 52
 — time and manner of setting them out - ib.
 — what deemed when set out - 53
 — on whom the care of, falls when set out - ib.
 — when set out, parson may come by himself or agent to spread and dry them - 54
 — penalty inflicted by 2 & 3 *Edw.* 6. c. 13. for intercepting the parson in taking them away - ib.
 — the parson has a right to come on the land and take them away without interruption ib.
Tythes

INDEX.

- may be carried by the common way, or any other way the proprietor carried the other nine parts - 54
- Tythes*, tables of. See *Appendix*.
- several remedies for recovering them by common statute and ecclesiastical law 56
- how recoverable in old times - ib.
- when recoverable in ecclesiastical courts - ib.
- if the owner of the land stop up the way or prevent him in spreading, drying, or stacking them, this is deemed not a good setting them out, and the parson may have his action for redress - 55
- parson may break open any gate shut to prevent his carrying them off, but must commit no riot nor wanton damage ib.
- remedy against the parson for letting them remain longer than necessary after set out - ib.
- clergy protected from indictments for pursuing their claims for, in the spiritual courts - ib.
- by stat. 32 Hen. 8. c. 7. every person to pay tythes according to the custom of the parish where such tythes arise 62
- small, settled by 7 & 8 W. 3. c. 6. and proper remedies given for recovering them 75
- of considerable value how to be sued for, notwithstanding preceding statutes - 77
- offences concerning them, to be made by 1 Eliz. to the ordinary in London. See *London*
- V.
- Vicar*, ecclesiastical distinction between him and a parson 4
- endowed of small tythes within his parish, is not entitled to the small tythes from the glebe-land of his patron - ib.
- how generally endowed 6
- endowed, where cure of souls annexed, always favourably construed - ib.
- how a clerk must be presented to one, according to ecclesiastical law - 4
- W.
- Waste* ground, what is so considered - 12
- lands made tytheable by 2 Edw. 6. c. 13. 50
- Wheat*, table of composition for 184
- White-thorn*. See *Hawthorn*, *Holly*, *Willow*, &c.
- Willows*, growing about a house, not tytheable unless felled 50
- Windmills*. See *Mills*.
- Wood*, growing in nature of an herb, a small tythe - ib.
- how to be set out - ib.
- Working* horses. See *Horses*.
- Wood*, generally passes for a small tythe - 50
- how discharged from tythes 51
- manner of tything - ib.
- Wool*, deemed a mixed small tythe - ib.
- how collected - ib.

La.

1. be
4
rta
inde
the
is
1. 1
fou
and
2
po
re

2.
3.
4.
5.
6.
7.

8.

9.
10.
11.
12.
13.
14.

EP APF QJ12
The law of tythes,

Stanford Law Library



3 6105 044 402 134

